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SUPREME COURT
STATE OF WASHINGTON
7/6/2020 4:32 PM
BY SUSAN L. CARLSON
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NO. 98066-7

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

CORY TAYLOR PRATT, Petitioner

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO.16-1-02135-2
COURT OF APPEALS NO. 51777-9-II

SUPPLEMENTAL BRIEF OF RESPONDENT

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INTRODUCTION

This case involves a question of whether the defendant met the statutory criteria for a Special Sex Offender Sentencing Alternative ('SSOSA'). The defendant never met his victim prior to a birthday party wherein the victim and the defendant's daughters were both guests. The defendant was the victim's mother's stepsister's husband's nephew. The defendant took the sleepover birthday party as an opportunity to enter the tent where the children were sleeping at 5:30am and touch the crotch, butt, leg, and arm of a ten-year-old girl. The trial court erroneously found that the defendant had an established relationship or connection to the victim and sentenced the defendant to a SSOSA sentence. The State appealed the sentence and the Court of Appeals reversed, finding the trial court erred in finding the defendant was statutorily eligible for a SSOSA sentence as there was no established relationship or connection between the defendant and the victim. The defendant petitioned this Court for review, which was accepted.

STATEMENT OF THE CASE

Cory Pratt (hereafter 'Pratt') was convicted of Child Molestation in the First Degree after he touched the crotch, butt, leg, and arm of ten-year-

old M., a child he had never met before. CP 2-5, 68-72.¹ A bench trial was held on October 2 and 3, 2017 before the Clark County Superior Court. CP 68. After hearing from ten witnesses and considering multiple admitted exhibits, the court found Pratt guilty of Child Molestation in the First Degree as charged in count 1. CP 68-72; RP 313.² The court imposed the special sex offender sentencing alternative (SSOSA) over the State's objection and against the victim's wishes. CP 99-115; RP 348, 360. The State filed a notice of appeal of the sentence imposed. CP 185. The Court of Appeals reversed the trial court's SSOSA sentence, finding that Pratt did not qualify for a SSOSA sentence as he had no established relationship or connection with the victim. *See State v. Pratt*, 11 Wn.App.2d 450, 454 P.3d 875 (2019). Pratt filed a petition for review to this Court, which was granted. The State hereby submits this supplemental brief.

At trial, the testimony showed that M. did not have an established relationship or connection with Pratt. Sarah Jackson testified that her husband is Troy Howington. RP 47. Troy Howington's nephew is Pratt.

¹ There were multiple clerk's papers filed with this Court. The State refers to the Second Amended Clerk's Papers and the Corrected Clerk's Papers filed with this Court on March 28, 2018.

² As both the State and Pratt filed notices of appeal in this matter, both parties had verbatim reports of proceedings prepared. The State refers to the verbatim report of proceedings arranged by the State, transcribed by Reed Jackson Watkins, LLC, and filed with this Court on April 16, 2018.

RP 48. Ms. Jackson has a step-sister named Jennifer.³ Jennifer has three children, one of whom is M. RP 48. Jennifer testified that she did not know Pratt, had never interacted with him, had never had a conversation with him, and to her knowledge had never been at any gathering that he attended. RP 115. Likewise, M.'s father, Donald, had never met Pratt, had never spoken to him, and believed that M. had never met him. RP 177. Ms. Jackson could not testify for sure as to whether M. or her parents knew Pratt, but assumed they had to have known of each other as Pratt has been a part of Ms. Jackson's own life for so long and would have been at family get-togethers. RP 53-54. Ms. Jackson concluded, however, that M. and her parents likely had never talked to each other or had a conversation. RP 54.

On July 23, 2016, Ms. Jackson held a birthday party for her eldest child, who turned 7. RP 50-52. Many girls attended Ms. Jackson's daughter's birthday party, and the children partook in swimming, playing in the backyard, birthday cake, and presents. RP 56. In the evening, the girls had s'mores and sat around a fire telling scary stories. RP 57. A tent was set up in the backyard for the girls to have a camp-out. RP 58. The girls, including M., went to bed around 10pm that evening, falling asleep

³ To preserve the victim's privacy, the State refers to her parents by their first names only. The State intends no disrespect.

around 10:30pm. RP 62-63. One of the girls in attendance was Pratt's daughter. RP 66. Ms. Jackson stayed at the house and went to sleep around midnight. RP 67. Pratt and his uncle, Mr. Howington, left the house for many hours and returned around 5:30am. RP 69-70. Upon their return, Pratt went into the tent where the girls were still sleeping and laid down. RP 70.

According to M.'s testimony at trial, "something happened." RP 151. She woke up, felt something, and saw someone was touching her. RP 151. She eventually rolled off her bed and tried to stay quiet. RP 151. She could see it was a man's arm touching her on her front crotch. RP 152. The man was rubbing her on her front crotch with his hand. RP 153. M. rolled over onto her left side, facing away from the man touching her. RP 153-54. He then touched her on her lower back, and M. again rolled away from him, this time off of the air mattress she had been on and onto the ground. RP 155-56. When she was touched, M. felt scared and had the chills. RP 156.

M. participated in a forensic interview about what happened. RP 15-18. A large portion of it was played during the trial as a recorded recollection. RP 195-222. M. told the interviewer that she woke up to the defendant touching her on her crotch, which she described as the area that she would go pee from. RP 202. M. said that after she rolled away, Pratt

reached for her arm and she pulled her arm away. RP 208. He then tried to rub her leg, but she scooted over; he then started touching her bottom. RP 208. Pratt used his hand to rub and touch M. RP 209. M. also told the forensic interviewer she had never met the defendant or his daughter before. RP 215. Ms. Jackson never observed M. and Pratt interact at the party on Saturday, or the following day. RP 76-77.

Later that morning after they woke up, M. unsuccessfully tried to tell two girls at the party what had happened; she then called her grandmother. RP 164-65. The next morning, Ms. Jackson saw M. using her phone. At one point, M. said she was calling her grandmother. RP 75. Later that morning into the afternoon Ms. Jackson noticed that M. was acting a little funny. RP 76 Ms. Jackson asked her what was wrong, and M. told her it was personal. RP 76. Ms. Jackson noted that M. wanted to go home, was eagerly waiting for someone to come pick her up, and even climbed a tree to watch for traffic over the fence. RP 80.

Kathleen Davidson is Donald's mother, making her M.'s paternal grandmother. RP 125. Ms. Davidson had a close relationship with M. RP 116, 126, 179-80. The morning after the sleepover, M. left multiple anxious and scared sounding voicemails with Ms. Davidson. RP 128. Ms. Davidson and M. did connect on the phone later that morning. RP 128. Later that morning, when M. and her grandmother finally connected on

the phone, M. told her that something had happened, but that she couldn't talk about it right then. RP 129. M. called her grandmother again when she was in the car on her way home. RP 130. M. then called Ms. Davidson again once she got home. RP 130.

During their third conversation that day, Ms. Davidson urged M. to tell her parents what she had told her, but M. was worried and anxious about doing so. RP 131. Ms. Davidson told M. that she needed to tell her parents and if M. hadn't done it in 10 minutes that she would call her dad. RP 166. M. then told her mom what had happened after the birthday party. RP 165.

When M. first came out of her room to tell her mom, her mom noticed that M. seemed scared; she started crying and said she was scared to tell her what had happened. RP 120. M. was also scared her parents would be mad at her, but she eventually told her parents what had happened which resulted in her dad calling the police. RP 120, 166.

Prior to the incident, M. did not have problems sleeping, nor did she suffer from nightmares. RP 122. After the incident, and for the next few months, M. had trouble sleeping and said she kept remembering what happened. RP 122, 170.

During Pratt's testimony at trial he could not remember M.'s name. RP 236. In describing the children present at the party he referred to M.

and her sisters, naming one of her sisters and then saying, “I forget the other two names.” RP 236. Pratt indicated he had never met M. before the sleepover, and had no interactions with her. RP 261-62.

When the court announced its verdict, it noted that M. and Pratt “had never met.” RP 308. The Court further stated, “M. is a stranger who is at a party with him.” RP 308. The trial court further found the aggravating factor of abuse of trust was not met because M. and Pratt “were, in essence, almost total strangers. There was no relationship. Short-term, just meeting at this party before.” RP 311. The Court found Pratt guilty of Child Molestation in the First Degree. RP 313. Similarly, in its written findings, the trial court noted that M. had not met Pratt prior to the day of the party. CP 69.

At sentencing, the State asked the Court to impose a standard range sentence. RP 347-52. The pre-sentence investigative report recommended a standard range sentence. CP 51. Pratt continued to deny the crime occurred, but was able to find a treatment provider who indicated he would be amenable to treatment with a provider who was willing to work with “deniers.” CP 85-94. Pratt asked the Court to impose SSOSA. RP 353-58. The State objected, indicated that the victim also opposed SSOSA, noted that the defendant took the matter to trial and denied the crime occurred, and argued that Pratt did not have a relationship or

connection to M. which, in turn, made him ineligible for SSOSA. RP 347-52. Over the State's objection, the Court granted SSOSA. RP 360; CP 99-100.

In deciding to order SSOSA, the trial court agreed the defendant's relationship to the victim was "tenuous." RP 360. The trial court also indicated that it was not a situation in which the defendant "sought out the victim for the purposes of committing the act," as the defendant "knew of the [victim]" and he "knew of the parents [of the victim]." State's RP 360. The trial court's written findings held that Pratt and M. had an established relationship or connection because M.'s family is related through marriage to Pratt's family, Pratt knew of M. and had been acquainted with M.'s family, Pratt and M. were both invited to the same party, and M. and Pratt had contact at the party other than the molestation. CP 99.

ARGUMENT

- I. Because Pratt did not have an established relationship with, or connection to, M. when he molested her, he is not eligible to be sentenced under the special sex offender sentencing alternative (SSOSA) and, accordingly the trial court erred when it sentenced Pratt to SSOSA.**

Pratt did not meet all the eligibility requirements for SSOSA, and the trial court erred in imposing the sentence. Pratt did not have an established relationship or connection to the victim such that the only

purpose of the relationship was not the commission of the crime. The trial court's imposition of SSOSA was properly reversed by the Court of Appeals, and that holding should be affirmed by this Court.

The requirements for an offender's eligibility for a SSOSA sentence are set forth in RCW 9.94A.670(2). One of the requirements is that "the offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime. . . ." RCW 9.94A.670(2)(e). Pratt failed to meet this eligibility requirement because (1) he had never met M. or her family before; (2) he had no interaction with her except for his molestation of her while she was asleep at a sleepover to celebrate her cousin's seventh birthday; and (3) "knowing of" someone's existence does not equate to an established relationship or connection to that person.

A. STANDARD OF REVIEW

Whether a defendant is eligible for SSOSA is a question of statutory interpretation. *State v. Landsiedel*, 165 Wn.App. 886, 269 P.3d 347 (2012) (citing *Dot Foods, Inc. v. Dept. of Revenue*, 166 Wn.2d 912, 215 P.3d 185 (2009)). This Court reviews a defendant's eligibility for SSOSA de novo. *Id.*

B. THE PLAIN LANGUAGE OF THE SSOSA STATUTE

A court's main duty in interpreting a statute is to carry out the legislature's intent. *Lake v. Woodcreek Homeowners Ass'n*, 169 Wn.2d 516, 243 P.3d 1283 (2010). Courts first look to the plain meaning of the statute. *Id.* If the plain language is unambiguous, then the legislative intent is apparent from the language used, and this Court will not construe the statute otherwise. *State v. J.P.*, 149 Wn.2d 444, 69 P.3d 318 (2003); *State v. Armendariz*, 160 Wn.2d 106, 156 P.3d 201 (2007). If the language of a statute is susceptible to multiple meanings, then a Court may look to legislative history to determine the meaning of the statute. *Dep't of Ecology v. Campbell & Gwinn*, 146 Wn.2d 1, 43 P.3d 4 (2002). A statute's plain meaning may be determined by analyzing what the legislature has said in the statute and related statutes which may disclose the legislature's intent regarding the statute in question. *J.P.*, 149 Wn.2d at 450. Plain meaning is "discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *State v. Engel*, 166 Wn.2d 572, 210 P.3d 1007 (2009). In determining the plain meaning, Courts are careful not to add words, and all the language of the statute must be given effect. *Rest. Dev., Inc. v. Cananwill, Inc.*, 150 Wn.2d 674, 80 P.3d 598 (2003).

No statute further defines “established relationship” or “connection to” as used in the SSOSA statute. Among its many meanings, Merriam-Webster defines “establish” as “to institute (something, such as a law) permanently by enactment or agreement; to make firm or stable; to gain full recognition or acceptance of. . . .” *Merriam-Webster.com* (retrieved May 29, 2018, from <https://www.merriam-webster.com/dictionary/established>). In Black’s law dictionary, “establish” is defined as “to found, to create, to regulate, to make or form, to found, recognize, confirm. . . .” *Black’s Law Dictionary* (retrieved May 29, 2018, from <https://www.thelawdictionary.org/establish>). Because established is the past tense of the verb “to establish,” we can conclude that when used as an adjective it means something formed, created, stable, fully recognized or accepted, or previously instituted or enacted.

“Relationship” is relevantly defined as “a state of affairs existing between those having relations or dealings.” *Merriam-Webster.com* (retrieved May 29, 2018, from <https://www.merriam-webster.com/dictionary/relationship>). *Black’s Law Dictionary* defines “relationship” as “a particular type of connection existing between people related to or having dealings with each other.” *Black’s Law Dictionary* (retrieved May 29, 2018, from <https://www.thelawdictionary.org/relationship>). Therefore an “established

relationship” is a formed, created, stable, fully recognized or accepted, or previously instituted state of relations or connection between people. The word “connection” is defined as “the act of connecting; the state of being connected; contextual relation or association; relationship in fact; a relation of personal intimacy; a person connected with another especially by marriage, kinship, or common interest; a political, social, professional, or commercial relationship.” *Merriam-Webster.com* (retrieved May 29, 2018 at <https://www.merriam-webster.com/dictionary/connection>).

The meaning of “established relationship” and “connection” are not susceptible to multiple meanings. It is clear from the plain meaning of the words in RCW 9.94A.670(2)(e) that the legislature intended SSOSA to be for individuals with whom the victim knew, and had prior dealings with, someone the victim *had a relationship with*, a relationship that was based on more than simply the criminal act perpetrated against the victim. When all the language of the statute is given effect, it is evident that only offenders who knew their victims, who had dealings with their victims, and who was part of the victim’s life are eligible for SSOSA. Anyone whose only connection to the victim is the crime itself is not eligible. Pratt had no standing, formed, stable, recognized or accepted relationship or connection to M. By all accounts he had never spoken to her before, and in fact, from all the testimony taken at trial *still* has never spoken to her as he

did not utter a word as he molested her. Knowing *of* another person's existence does not create a connection or relationship with that person. Potentially handing that person a piece of candy does not establish a connection or relationship with that person. Such a connection is too attenuated to satisfy the statutory requirement of an established relationship or connection to the victim. If handing a child a piece of candy were sufficient to create an established relationship or connection to that child, then any predatory offender who lured a child into their van or house by promise of candy would be eligible for SSOSA and that is clearly not what the Legislature intended; that would be an absurd result. The trial court said it best when it concluded that Pratt and the victim were "strangers." The sole connection between Pratt and the victim was his commission of the crime, if that can even be considered a connection to the victim. Pratt had no established relationship or connection to M. and the trial court erred in concluding he did.

If this Court finds that the terms "established relationship" and "connection to" are subject to multiple meanings, then it should consult the legislative history.

C. THE LEGISLATIVE HISTORY OF THE SSOSA STATUTE

The Legislature added the requirement that the offender have an established relationship with, or connection to, the victim apart from the

commission of the crime in 2004. LAWS OF 2004, ch 176, sec 4. This provision limits the type of offenders eligible for SSOA. In 2004, the Legislature noted,

SSOSA helps to encourage victims to come forward and can help prosecutors get convictions in tough cases.

...

SSOSA was originally designed for victims to try to get cases into court that would not be there, if not but for the sentencing alternative. SSOSA has been an important and narrowly used option for victims. The substitute puts great weight on victim input and narrows the pool of eligible persons.

...

The majority of sex crimes against children are committed by people who have a relationship with the child. For those kids and their parents, you have to have the SSOSA option available. If the treatment option is eliminated, people will go underground.

Washington House Bill Report, 2004 Reg. Sess. H.B. 2400. The original intent in enacting a sentencing alternative for sex offenders was to encourage reporting of these offenses by victims, and to increase the likelihood of obtaining convictions in difficult cases. *See id.* The 2004 amendment was intended to promote that goal, but also to narrow the pool of eligible offenders. *Id.* (stating “[t]here is no more essential duty for the Legislature than the protection of lives and the administration of justice.

Persons guilty of victimizing our children must serve time. A message must be sent for the sake of children - if you do the crime, you do hard time. This bill will give families and victims justice. As for the costs of the bill, the safety of our children is priceless. Everything possible should be done to protect children. Use of SSOSA has led to sentences for these crimes dramatically below the standard range. People get much more severe punishment for less serious crimes”).

In essence, the inclusion of a requirement that the victim have a relationship with the perpetrator furthered the original intent of the SSOSA statute which was to promote reporting of sexual crimes against children perpetrated by family members, in the hope that the possibility of no prison sentence would make reporting more palatable and thus a more frequent occurrence. *See State v. Jackson*, 61 Wn.App. 86, 809 P.2d 221 (1991) (noting that one of the legislature’s reasons for creating the sex offender sentencing alternative was because “providing alternatives to confinement had resulted in increased reporting of sex crimes, especially in the case of intrafamily abuse.”). Allowing SSOSA for an individual who has never spoken to the victim, and who can’t even remember her name when he is testifying at his trial for molesting her, was clearly not what the legislature intended in creating and amending the SSOSA statute. Pratt is not the person whom the legislature intended SSOSA to cover; he

is ineligible because he did not know M., did not interact with her at all, did not know her family, and was not a part of her life in any way. If the victim's mother's step-sister's husband's nephew is considered to have a relationship or connection to the victim by virtue of his uncle's marriage to a woman whose father married the grandmother of the victim, then practically anyone could be determined to have a "connection to" or "established relationship" with the victim of his or her sex crime. This interpretation becomes especially absurd when considering smaller cities and counties, where many people know people who attend the same schools, work for the same companies, have previously dated someone's cousin, or have mutual friends on Facebook. The statutory limitation found in RCW 9.94A.670(2)(e) would be rendered meaningless as nearly any defendant could claim a connection to a victim by virtue of his mother's cousin's brief dating history with the victim's second cousin once removed. This was not the intent of the legislature.

A trial court is statutorily prohibited from imposing a SSOSA sentence when the defendant does not meet the eligibility criteria under RCW 9.94A.670. *See State v. Adams*, 119 Wn.App. 373, 82 P.3d 1195 (2003). Pratt did not meet the eligibility criteria for SSOSA as he did not have an established relationship or connection to M. The trial court recognized this very fact in delivering his verdict; the trial court's reasons

for not finding that this was an abuse of trust was because Pratt and M. were virtually “strangers” and had not met prior to the birthday party. No trust relationship existed. No relationship existed. Pratt was a stranger to M., a stranger who violated her in a terrible way when she was meant to be having a carefree sleepover for her little cousin’s birthday. And to this day, Pratt has not spoken a word to M.

The Court of Appeals properly found that

[t]he legislature intended the connection between the victim and the offender to be close enough that a SSOSA sentence would encourage reporting despite that connection. It was not meant to apply to an offender who could not remember meeting or speaking to the victim before the incident and had nothing beyond a possible “hi-bye” acquaintance with her parents. MB’s familial relationship to Pratt is also tenuous. MB’s mother’s stepsister is married to Pratt’s uncle. The legislature did not intend to make a person eligible for a SSOSA sentence based on this type of attenuated connection. We are also mindful that the connections articulated by the court in its findings of fact are, for the most part, between the victim’s family and Pratt, not the victim, MB, and Pratt.

State v. Pratt, 11 Wn.App.2d 450, 461, 454 P.3d 875 (2019). Allowing Pratt to have a SSOSA sentence is based on an absurd reading of the SSOSA statute. If the conclusion is that Pratt’s *sole connection* to the victim was not the commission of the crime because he may have handed her a marshmallow beforehand, then complete strangers can establish connections with victims so long as before sexually assaulting them the

offender first lures the victim into a car or house by asking them to help find a puppy or by promising them candy. The utterance of words, the handing of a treat to a child does not create a connection, and certainly does not create an established connection between the parties. This reading of the SSOSA statute directly contradicts the stated purpose behind the SSOSA statute and furthermore would lead to absurd results; we are to presume the Legislature did not intend absurd results and Courts are to interpret statutory language to avoid such absurd results. *State v. Ervin*, 169 Wn.2d 815, 824, 239 P.3d 354 (2010).

The trial court erred in finding there was an established relationship or connection between Pratt and M. As there was no relationship or connection, Pratt was not eligible for a SSOSA sentence and the trial court imposed an unlawful sentence. The Court of Appeals should be affirmed and this matter should be remanded for a new sentencing hearing wherein the trial court imposes a statutorily authorized sentence.

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CONCLUSION

The Court of Appeals properly held that Pratt was not eligible for a SSOSA sentence because he did not have an established relationship or connection to the victim. The Court of Appeals should be affirmed and this matter should be remanded to the trial court to impose a statutorily authorized sentence.

DATED this 6th day of July, 2020.

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July 06, 2020 - 4:32 PM

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Appellate Court Case Title: State of Washington v. Cory Pratt
Superior Court Case Number: 16-1-02135-2

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