

FILED
SUPREME COURT
STATE OF WASHINGTON
9/27/2021 2:17 PM
BY ERIN L. LENNON
CLERK

No. 100130-4

IN THE SUPREME COURT
FOR THE STATE OF WASHINGTON

Court of Appeals No. 37053-4-III

STATE OF WASHINGTON
Respondent

v.

STEPHEN PEREZ
Petitioner

PETITION FOR REVIEW

John Gary Metro WSB 37919
719 Jadwin Avenue
Richland WA. 99352
(509) 943-7011
garymetro@outlook.com
Attorney for Petitioner

TABLE OF CONTENTS

INTRODUCTION.....	1
IDENTITY OF THE PETITIONER.....	1
DECISION OF THE COURT OF APPEALS.....	3
ISSUES PRESENTED FOR REVIEW.....	4
STATEMENT OF THE CASE.....	4
ARGUMENT.....	4
CONCLUSION.....	6

TABLE OF AUTHORITIES

STATE CASES

Peoples Mortgage v. Vista View Builders 6Wn. App 744 (1972)	4
State v. Gellein 112 Wn2d 111	6

STATE STATUTES

RCW 9A.28.030	5
---------------	---

SECONDARY SOURCES

New York Times Magazine Aug.26, 2020 Convicted of Sex Crimes but With No Victims	1
---	---

INTRODUCTION

In 2015, a Sargent in the Washington State Patrol created a sting operation which was purportedly designed to capture pedophiles. The sting has resulted in hundreds of arrests and convictions. The plan however appears to be fatally flawed in that the plan resulted in the arrest and conviction of almost no pedophiles. (See NY Times Magazine Aug 26, 2020)

IDENTITY OF THE PETITIONER

The petitioner in this case is Stephen Perez. Mr. Perez was convicted of attempted rape of a child in the second degree and communicating with a minor for immoral purposes. He was sentenced to eighty-four months in prison. The Court of Appeals Division Three upheld his conviction.

DECISION OF THE COURT OF APPEALS

The Court of Appeals ruled that there was sufficient evidence to support the jury's finding that Mr. Perez intended to have sex with the imaginary 13-year-old because he agreed to a price of \$50 for oral sex. *Court of Appeals Decision p. 4, 8*. The Court of Appeals also ruled that Mr. Perez took a "substantial step" towards completing the forbidden act because he stopped to buy the imaginary character a slurpee and because he had condoms and over one hundred dollars in his wallet. *Id. p.9*.

ISSUES PRESENTED FOR REVIEW

Can a reasonable Court or jury find a person guilty of a sex crime when the language between the imaginary character and alleged perpetrator clearly shows that the alleged perpetrator had not made up his mind whether he wanted to have sexual intercourse with the imaginary character?

STATEMENT OF THE CASE

The Washington State Patrol set up sting operation in Benton County, Washington. The purpose of the sting was to find people who wanted to have sex with children. An ad was placed by the patrol on Craig's List. The advertiser said she was 13 and wanted some fun, and she was getting a lot of responses. Mr. Perez responded to the ad. The creator of the sting, Sgt Rodriguez, played a character he created and called Anna who participated in the following the following dialogue:

Mr. Perez: You want to start with just a BJ or we can just meet for a bit and chat. Do nothing. It's okay if we just chill and chat.

Sgt. Rodriguez: Sure. \$50. If you are cute maybe less..."
Court of Appeals Decision P. 4

ARGUMENT

No interpretation of Mr. Perez's statements would lead a reasonable person or jury to believe beyond a reasonable doubt that Mr. Perez intended to have sex with Anna.

If the rules of contract were applied to this dialogue, the result would be clear. The parties have agreed to chill and talk in exchange for Mr. Perez paying Anna up to \$50. Nothing more has been bargained for; the intentions of the parties are unambiguous. A bargain was made to talk. There was no bargain to have sex. See *People Mortgage v. Vista View Builders 6 Wn App. 944*.

The case before the court is a criminal case. The crime Mr. Perez has been convicted is a crime of attempt. A criminal attempt is an act that although done with the intention of committing a crime for one reason or another falls short of

completing the crime. The state must show beyond a reasonable doubt that the accused intended to commit a crime. *RCW 9A.28.020*. Here, there is evidence that Mr. Perez might commit a crime but he Mr. Perez makes it absolutely clear to “Anna” that he is committed to nothing more than talk. Mr. Perez is entitled to a judgment as a matter of law because he has made it plain and clear that he was undecided about having sex with Sgt. Rodriguez’s imaginary character. Consequently, the state has not proved that Mr. Perez intended to commit a crime. The question presented to the Supreme Court is whether a bargained for exchange which clearly rules out the necessity of a sex act between the parties can be used to show beyond a reasonable doubt that Mr. Perez intended to have sex with the imaginary victim.

The defendant believes the answer is quite the opposite. Common sense and fundamental fairness demand that Mr. Perez be taken at his word. He did not know what he wanted to do. No reasonable court or jury can find that Mr. Perez intended to have sex with a minor.

CONCLUSION

The petition for review should be granted. The Court of Appeals decision fails to take into account the clear intentions of Mr. Perez to limit his contact with the imaginary character to talking. Due process demands that each and every element of a crime be proved beyond a reasonable doubt. *State v. Gellein 112 Wn 2d 111*. Intent beyond a reasonable doubt cannot be inferred when a person enters into an unambiguous agreement which excludes the necessity of sexual activity.

Dated: September 26, 2021

s/John Gary Metro

John Gary Metro WSB 37919
719 Jadwin Avenue
Richland WA. 99352
(509) 943-7011
garymetro@outlook.com
Attorney for Petitioner

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,)	
)	No. 37053-4-III
Respondent,)	
)	
v.)	
)	
STEPHEN C. PEREZ,)	UNPUBLISHED OPINION
)	
Appellant.)	

STAAB, J. — A jury found Mr. Perez guilty of attempted rape of a child in the second degree, and communicating with a minor for immoral purposes. On appeal, Mr. Perez challenges the sufficiency of the evidence to convict him. After reviewing the record, we find the evidence sufficient and affirm.

FACTS

In July 2017, Mr. Perez responded via e-mail to an advertisement (ad) in the casual encounters section of Craigslist. The ad had been posted by Sargent Carlos Rodriguez as part of a Net Nanny Operation. The ad read: “Young looking for older daddy—w4m (Richland) I am young looking for older daddy to take care of this young baby girl. Be real. Be nice, your pic gets mine. Let’s get lit! I have a daddy fetish and love to take showers, very clean. Let’s talk. DDF.” Report of Proceedings (RP) at 81-82.

Mr. Perez responded: "I would like more info. I'm 45 YO and looking. Thanks."

RP at 84.

Sgt. Rodriguez then responded:

I am in need of a daddy. I ran away a while ago cuz my mom was a bitch. Just hanging with friends for right now, but just want to have some fun and forget about things. If you want to have some fun with me, tell me how and let's chat. I'm getting a lot of responses, so get me your phone number and we can talk. If you don't like young fun then this isn't for you. I'm 13 but I am all woman and fine AF.

RP at 84-85. The conversation went back and forth, and then Mr. Perez asked twice if "she" was an undercover police officer. RP at 86-87.

Sgt. Rodriguez's responses seem to have alleviated Mr. Perez's concerns because he then asked, "What are you wanting to do? When do you want to meet?" RP at 88.

The conversation then moved to text and continued:

"Anna" (Sgt. Rodriguez): This is Anna, we were talking about meeting today, daddy. How are you going to take care of me? What's your name?

Perez: Name is Steven, how are you? What you mean by take care of? What are you needing?

"Anna": I don't have any money pretty much.

Perez: So how much you needing?

"Anna": Depends on what you want to do with me, daddy, I'm flexible. . . . Well, tell me things you like to do. If you want to do that, then come over.

Perez: What you like to do or tell me what you won't do, might be easier.

"Anna": No anal, have to use condoms.

Perez: Darn, I love anal.

“Anna”: I just haven’t do it.

Perez: You need to try it, you might like it.

“Anna”: Maybe for a lot of money, like how much? Does it hurt?

Perez: Not if it’s done right and slow for the first time, plus you got to relax and not tense up.

“Anna”: Can you show me maybe in an hour, but I don’t do it for nothing.

Perez: Where you want to meet?

“Anna”: There is a place near where I’m staying. A store. I have this place to myself tonight.

Perez: Where are you staying or what store?

“Anna”: I’m near a freeway.

Perez: Vague now, huh? . . .

“Anna”: I’m at my friend’s apartment. Have to find the address. She says it’s better to tell you the store first and then you send me a selfie when you get there so I know you don’t flake and, oh, don’t just show up whenever you want.

Perez: What store then?

RP at 88-89, 91-93. They went back and forth about a time and where she was staying and then discussed more details:

“Anna”: Do you have condoms?

Perez: No, I don’t. Do I do BJs and then you?

“Anna”: And what are you thinking for donation?

Perez: Not sure what you are wanting or what the usual.

“Anna”: My friend gets 100 for normal. It has to be more than that. I’m actually really scared.

Perez: You want to start with just a BJ or we can just meet for a bit and chat. Do nothing. It’s ok if we just chill and chat.

“Anna”: Sure. \$50. If you are cute maybe less, LOL??

RP at 95.

Anna then sent Mr. Perez to a 7-11 in Richland and asked him to send her a picture of himself at the store. RP at 98. The conversation went on:

“Anna”: You gonna bring condoms or you can get them there?

Perez: I thought it was just a BJ or chatting.

“Anna”: Oh, BJ is good. Are you clean? You good with the 50?

Perez: DDF.

“Anna”: How big are you, and are you shaved?

Perez: Not that big, and trimmed.

RP at 98-99. The defendant then sent Anna a picture of himself in front of an ATM at the 7-11. Anna requested Mr. Perez bring her a banana and blue raspberry Slurpee. She instructed him to drive toward a road she would be walking along, and he said he would be in a four door white truck.

Mr. Perez then purchased a banana and blue raspberry Slurpee and drove as directed by Anna. Mr. Perez was pulled over by police in the truck he described a short distance from where he was to meet Anna and taken into custody. Police executed a

search warrant of the truck and found a banana and blue raspberry Slurpee, an unopened box of condoms, and a wallet with \$103 in cash.

Mr. Perez's testimony at trial provided conflicting accounts of what happened. He testified that at the time he was pulled over by police, he was responding to a work call. He also said he just wanted to chat with Anna and make sure she was okay, but also admitted that he had initiated a conversation about certain sexual acts. He admitted to having used casual encounters before to meet his wife at the time, despite statements to the police at the time of his arrest that he was unfamiliar with it. He further admitted that in his interview with police following his arrest, apparently still unaware of the nature of the sting operation, he indicated that he had been texting with a girl named Anna and referred to her throughout the interview as "Anna." Additionally, he admitted to asking the purported thirteen-year-old for a "blow job." RP at 250, 265-66. Mr. Perez's testimony at trial was the sole evidence presented on behalf of the defense.

The jury found Mr. Perez guilty of attempted rape of a child in the second degree and communication with a minor for immoral purposes. He was sentenced to 84 months to life in prison. The defendant then filed a notice of appeal.

ANALYSIS

Before we consider the evidence presented at trial, we first address Mr. Perez's assignment of error on appeal. Mr. Perez frames the issue in this case as trial court error for denying his motion to dismiss at the close of the State's evidence. As the State points

out however, a defendant who presents evidence after a court's denial of their motion to dismiss waives their right to appeal the denial of the motion to dismiss. *State v. Allan*, 88 Wn.2d 394, 396, 562 P.2d 632 (1977). Because the record is sufficiently developed, we will review to determine if the evidence is sufficient to support the convictions.

Evidence is sufficient to support a guilty verdict if any rational trier of fact, viewing the evidence and inferences from it in the light most favorable to the State, could find the elements of the charged crime beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). When a defendant challenges the sufficiency of the evidence, he or she admits the truth of all of the State's evidence. *Id.* Credibility determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). The court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Thomas*, 150 Wn.2d 821, 874-75, 83 P.3d 970 (2004).

“A person is guilty of rape of a child in the second degree when the person has sexual intercourse with another who is at least twelve years old but less than fourteen years old and not married to the perpetrator and the perpetrator is at least thirty-six months older than the victim.” RCW 9A.44.076(1). “Attempt” crimes require proof of intent to commit a specific crime along with a substantial step toward the commission of that crime. RCW 9A.28.020(1). In the context of sting operations, where the victim is a fictitious character and the defendant is charged with attempted rape of a child in the

second degree, the prosecution must prove: (1) knowledge of the age of the victim, (2) intent to have sexual intercourse with the victim, and (3) a substantial step toward the commission of the crime. *State v. Johnson*, 173 Wn.2d 895, 904, 270 P.3d 591 (2012). “Sexual intercourse” includes its ordinary meaning as well as penetration of the vagina or anus, however slight, or sexual contact involving the sex organs of one person and the mouth or anus of another person. RCW 9A.44.010(1). “[A] person who communicates with a minor for immoral purposes, or a person who communicates with someone the person believes to be a minor for immoral purposes, is guilty of a gross misdemeanor.” RCW 9.68A.090(1).

On appeal, Mr. Perez argues that the evidence was insufficient to show that he knew or believed the person he was communicating with was under the age of 14. When the perceived victim is fictitious, the State must prove intent to have sexual intercourse with a person under 14 years of age through “publication and receipt” of the information about the perceived victim’s age. *Johnson*, 173 Wn.2d at 908. In other words, proof that the perceived victim communicated her age and the defendant received this information. *Id.* The State must then prove that the defendant intended to have sexual intercourse with this victim. *Id.* In *Johnson*, the court determined that where both of the fictitious victims had told the defendant they were 17, the defendant had acknowledged their ages, and the defendant had asked them to work as prostitutes, there was sufficient evidence to prove knowledge. *Id.* at 898, 909.

Here, the evidence is sufficient to show that Mr. Perez received information that the perceived victim was under the age of 14. Mr. Perez responded to an ad stating, “I am young looking for older daddy to take care of this young baby girl.” Baby girl is a term commonly used when adults are looking for sex with children. Anna stated in a message to Mr. Perez that she was 13 years old and that she had run away from her mom. Mr. Perez later asked her twice if she was an undercover police officer, indicating he knew she was underage. Moreover, in his conversation with police following his arrest, Mr. Perez kept saying he just wanted to talk with “her,” indicating that he believed he was talking to Anna.

Mr. Perez also challenges the sufficiency of the evidence that he intended to have sexual intercourse with the perceived victim. At trial, he testified that he was just planning to bring Anna a Slurpee and chat. However, Mr. Perez responded to an ad in the casual encounters section of Craigslist that he had used before, a section for people looking for sex with no strings attached. The language used in the ad indicated Anna was a young girl looking to have sex with older men. The conversation between Mr. Perez and Anna included him talking to her about how he enjoyed anal sex, asking if she was willing to do oral sex, talking to her about the size and grooming state of his penis, and assuring her that he was disease and drug free. There was also an agreement on a price of \$50 for oral sex. Although Mr. Perez stated earlier in the conversation that he did not have condoms, police later found a sealed box of condoms in his truck, indicating he had

bought some on the way to meet Anna. At trial, Mr. Perez admitted that he believed the ad referred to a young girl calling an older man daddy and that he specifically asked a purported 13-year-old for a blow job.

Finally, Mr. Perez challenges the sufficiency of the evidence that he took a substantial step toward the commission of a particular crime. Mr. Perez went to the 7-11 as directed by Anna and sent her a picture of himself there. He then purchased her the Slurpee she had asked for and proceeded to drive to where they had arranged to meet. Police picked him up near the apartments where Anna said she was staying. When police searched his vehicle, they found a box of unopened condoms and \$103 in cash in his wallet. This evidence was sufficient to prove a substantial step toward the commission of this crime.

In his statement of additional grounds, Mr. Perez raises several additional issues. We reject his impossibility argument because neither crime requires the existence of an actual victim. *See* RCW 9.68A.090; *Johnson*, 173 Wn.2d at 900-01. He also claims his trial attorney was constitutionally ineffective and the trial court abused its discretion by precluding an entrapment argument. Because he fails to provide citations to the record or authority to support these arguments, we will not review them on appeal. RAP 10.3(a)(6); *State v. Elliot*, 114 Wn.2d 6, 15, 785 P.2d 440 (1990).

No. 37053-4-III
State v. Perez

Finding the evidence sufficient, we affirm Mr. Perez's convictions for attempted rape of a child in the second degree and communicating with a minor for immoral purposes.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

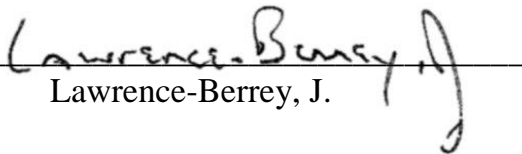


Staab, J.

WE CONCUR:



Fearing, J.



Lawrence-Berrey, J.

Renee S. Townsley
Clerk/Administrator

(509) 456-3082
TDD #1-800-833-6388

The Court of Appeals
of the
State of Washington
Division III



500 N Cedar ST
Spokane, WA 99201-1905

Fax (509) 456-4288
<http://www.courts.wa.gov/courts>

July 27, 2021

John Gary Metro
Metro Law Firm
719 Jadwin Ave
Richland, WA 99352-4217
garymetrolawfirm@gmail.com

E-mail:
Andrew Kelvin Miller
Terry Jay Bloor
Benton County Prosecutors Office
7122 W Okanogan PI Bldg A
Kennewick, WA 99336-2359

CASE # 370534
State of Washington v. Stephen C. Perez
BENTON COUNTY SUPERIOR COURT No. 171007921

Dear Counsel:

Enclosed please find a copy of the opinion filed by the Court today.

A party need not file a motion for reconsideration as a prerequisite to discretionary review by the Supreme Court. RAP 13.3(b); 13.4(a). If a motion for reconsideration is filed, it should state with particularity the points of law or fact which the moving party contends the court has overlooked or misapprehended, together with a brief argument on the points raised. RAP 12.4(c). Motions for reconsideration which merely reargue the case should not be filed.

Motions for reconsideration, if any, must be filed within twenty (20) days after the filing of the opinion. Please file the motion electronically through the court's e-filing portal or if in paper format, only the original motion need be filed. If no motion for reconsideration is filed, any petition for review to the Supreme Court must be filed in this court within thirty (30) days after the filing of this opinion (may be filed by electronic facsimile transmission). The motion for reconsideration and petition for review must be received (not mailed) on or before the dates they are due. RAP 18.5(c).

Sincerely,


Renee S. Townsley
Clerk/Administrator

RST:ko
Attach.

c: **E-mail** Hon. Samuel P. Swanberg
c: Stephen C Perez
#416037
Coyote Ridge Corrections Center
P.O. Box 769
Connell, WA 99326

METRO LAW OFFICE

September 27, 2021 - 2:17 PM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 100,130-4
Appellate Court Case Title: State of Washington v. Stephen C. Perez
Superior Court Case Number: 17-1-00792-1

The following documents have been uploaded:

- 1001304_Motion_Discretionary_Review_20210927140907SC691247_6425.pdf
This File Contains:
Motion for Discretionary Review - Discretionary Review (CA)
The Original File Name was Perez SupremePetition.pdf

A copy of the uploaded files will be sent to:

- andy.miller@co.benton.wa.us
- gasrymetro@outlook.com
- prosecuting@co.benton.wa.us
- terry.bloor@co.benton.wa.us

Comments:

Sender Name: Carla Toebe - Email: garymetrolawfirm@gmail.com

Filing on Behalf of: John Gary Metro - Email: garymetrolawfirm@gmail.com (Alternate Email: garymetro@outlook.com)

Address:
719 Jadwin Ave
Richland, WA, 99352
Phone: (509) 943-7011

Note: The Filing Id is 20210927140907SC691247