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COURT OF APPEALS  
DIVISION II

2014 DEC -5 PM 12: 59

STATE OF WASHINGTON

BY: E  
DEPUTY

STATE OF WASHINGTON  
COURT OF APPEALS, DIVISION \_\_\_\_\_

STATE OF WASHINGTON, )  
 )  
Respondent, )  
 )  
v. )  
 )  
Eugene Andrew Young )  
Appellant. )

Appeal No: 45 996-5  
No: 12-1-03740-1  
STATEMENT OF ADDITIONAL  
GROUNDS FOR REVIEW

I, Eugene Andrew Young, have received and reviewed the opening brief by my attorney. Summarized below are the additional grounds for review that are not addressed in that brief. I understand the Court will review this statement of Additional Grounds for Review when my appeal is considered on the merits.

Additional Ground 1

The text messages in the promoting commercial sexual Abuse part of the case. Attachment on the back page.

Additional Ground 2

Accomplice liability instruction. Attachment on the back page.

There are additional grounds, a brief summary is attached to this statement.

Dated this 12<sup>th</sup> day of November, 2014.

Respectfully Submitted,  
Eugene Andrew Young  
Appellant

## Attachment to Additional Grounds I

- 1) The trial court erroneously admitted Evidence of text messages sent to C.B.'s cellular telephone, because the messages were not sufficiently identified or authenticated, as required By ER 901(A).

Over repeated objection, the trial court allowed the state to present the content of text message received by C.B. that expressed a desire to engage in the promotion of C.B. The state asserted that these texts were sent by Mr Young, and that they proved he promoted and facilitated the acts of prostitution with C.B. Young unsuccessfully argued that the state had not presented sufficient proof of authenticity of the texts or the identity of the sender.

A trial court's admission of evidence is reviewed for abuse of discretion. This occurs when a trial court's decision is manifestly unreasonable or based on untenable grounds.

The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support finding that the matter in question is what its proponent claims. This requirement is met "if sufficient proof is introduced to permit a reasonable trier of fact to find in favor of authentication or identification."

First objection to text messages on page 396, Line 22-25

An ongoing objection was made toward the text message on page 398, 8-10

The state did not provide sufficient supporting evidence that Young was the individual responsible for sending the text messages to C.B.'s cellular telephone.

The fact that the text message came from a contact name she saved in her phone under "Papi" does not mean that the text message was actually written and sent by Young. There is nothing in the content of the messages from "Papi" that would establish Young, as opposed to Hutchinson or someone else, sent the text. And the state presented no evidence that Young owned or ever possessed the phone that the text messages were sent from. There just wasn't any evidence to support or establish that the text messages were actually what they purported to be. The state failed to sufficiently authenticate the text messages, and the trial court erred by admitting them over defense objection. Accordingly, the error in admitting them without proper authentication or identification was not harmless, and Young's conviction for Promoting Commercial Sexual Abuse of a minor must be reversed.

- 2) The state failed to present sufficient evidence that Young was the individual who communicated with C.B. through text messages.

Defendants Young and Hutchinson both tried to ascertain C.B. rightful age, ~~but were~~ ~~was~~ ~~of~~ page 258-259 Line 7-17

## Additional Ground 2

Because the language of accomplice liability instruction here did present an issue at trial, any alleged error was not harmless.

The trial court instructed the juries that an accomplice must have knowledge that his or her actions will promote or facilitate the commission of "a crime" rather than conforming to the statutory language of "the crime." Defendant contends that by using the term (Mere Presence) instead of "Presences" the court instructed the jury that Young was guilty as accomplice if he was merely present.

Erroneous instruction on accomplice liability, which referred to defendant's knowledge that defendant's conduct would promote or facilitate the commission of "a crime" rather than "the crime" was not harmless as to conviction for second degree rape, though the error was harmless as to conviction for Promoting Commercial sexual Abuse of a minor; defendant had been a principal only as to the Promoting and jury might have concluded that because Young Promoted C.B, he was guilty as accomplice to rape; The term "mere presents" is a mistake of law.