IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

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| STATE OF WASHINGTON,<br><br>Respondent.<br><br>v.<br><br>DERRICK LANG HUNTER,<br><br>Appellant. | )<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>)<br>) | NO. 38828-6-II<br><br><br><br><br>APPELLANT'S STATEMENT FOR ADDITIONAL GROUNDS FOR REVIEW |

I, Darrick L. Hunter have received and reviewed the opening brief prepared by my attorney Valerie Marushige.

Summarized below are additional grounds for review that was not addressed in that brief:

ADDITIONAL GROUND

1. The trial court abused it's discretion when it allowed the State to amend the information one day before trial. The State didn't provide to the court any reasons for the amendment and the trial court did not provide any reasons in support of it's decision to allow the amendment when the defendant personally objected to the amendment.

The trial court must provide an explanation or reason for it's decision so that the Court of Appeals can decide if the court based it's decision on tenable grounds or reasons. Defendant's attorney informed the court that he was surprised by the amendment and that the complexity of the defendant's case became more complex. The defendant has a constitutional right to have an attorney who has had sufficient opportunity to prepare for trial. The actions of the State and the trial court caused defendant and his attorney hardship and the State

has inhibited defendant and his counsel's ability to prepare for trial in a timely manner. On January 30, 2007 at about 9:40 am, Detective Darrin Miller contacted the defendant at the jail. Miller discussed with the defendant the nature of the case and attempted to discuss with the defendant the incidents with Mary Oh, Tiffany Songer, Desiree Looney, Sheherazed Poshthoui, Alisha Smalls and Rikki Evans. At that point Miller stopped asking the defendant questions when the defendant refused to talk with him without an attorney present. Miller advised Hunter that he was under arrest for Communicating with Minors for Immoral Purposes, Failure to Register as a Sex Offender in Washington State and Luring. Miller left a booking sheet with Officer Iwanski at the booking desk and asked her to add those charges to the defendant.

Miller then forwarded that information and the evidence to the State. The next day on January 31, 2007 the State filed with the trial court a declaration for determination of probable cause based upon the information, reports and/or investigation conducted by Detective Miller as mentioned in police reports 063121066 and 070180076. Instead of charging the defendant with the crimes of Communicating with Minors and Luring, the State decided to charge the defendant with Attempted Kidnapping in the First Degree and Failure to Register as a Sexual Offender. The State provided to the defendant's attorney all the information, statements, police reports and evidence relating to the incident with Oh, Songer, Looney, Poshthoui, Smalls and Evans atleast two months before the April 25, 2007 Omnibus Hearing. There was no on-going investigations and no new information was provided to the defendant's attorney. The State Mismanaged the prosecution of the defendants case. It possessed all the facts and evidence for counts

III, IV, V and VI of the Amended Information when it initially charged the defendant with counts I and II of the Original Information and when Detective Miller contacted the defendant at the jail on January 30th 2007.

ADDITIONAL GROUND

2. The State failed to prove beyond reasonable doubt that the defendant communicated with a minor for immoral purposes as alleged in count VI of the amended information. There's insufficient evidence in the record proving that when the defendant complimented Alisha Smalls for having a nice body shape the purpose behind the communication was of a sexual nature (namely) for the purpose of promoting Smalls exposure to and involvement in sexual misconduct with the defendant or with another person. There's nothing immoral about complimenting a minor for having a nice body shape when the purpose behind the communication is not of a sexual nature. The defendant never suggested, invited or stated anything sexual or vulgar to Smalls. Testimony from Smalls showed that the contact or conversation with her and the defendant lasted about two minutes.

ADDITIONAL GROUND

3. The State failed to prove beyond reasonable doubt that the defendant communicated with a minor for immoral purposes as alleged in count V of the amended information. There's insufficient evidence in the record proving that the defendant was the person who approached and communicated with Sheherazed Poshthoui. It was obvious from the evidence and testimony of the witnesses that Poshthoui wasn't being truthful about being approached by someone claiming to be a modeling agent. It was clear from the witness Rikki Evans that Poshthoui was specifically asking Looney, Evans, Smalls and others for details about the alleged perpetrator to pass on to the police.

ADDITIONAL GROUND

4. The State failed to prove beyond reasonable doubt that the defendant communicated with a minor for immoral purposes as alleged in count IV of the amended information. There's insufficient evidence in the record proving that when the defendant asked Looney questions, that the purpose behind asking certain types of questions was for promoting Looney's exposure to and involvement in sexual miscoduct with the defendant or with another person.

ADDITIONAL GROUND

5. The court improperly relied on information not contained in the affidavit of probable cause to conclude probable cause and a valid nexus existed to support the warrant. The trial court in it's tenative ruling agreed with defense counsel that the affidavit doesn't explain how discovering the photo studio or photo's in the residence and vehicle would link the defendant to the crime. The court however, concluded that the items listed in the warrant were in the home or the car because the defendant stated that they were in the car and a photo studio in the home. The affidavit of probable cause for the search warrant as presented to Judge Serko contained no such statements, inferred, direct, or otherwise.

ADDITIONAL GROUND

6. The court improperly relied on a child pornography profile to find a nexus in the search warrant. The defendant, in his arguments to the court claimed that approximately 5-8 months had expired between the initial contacts with the alleged witnesses and the issuance of

the warrant and that there was nothing in the affidavit to indicate where the defendant lived at the time, to establish a nexus between the places searched and the actual items to be seized in February 2007.

There was nothing to indicate that the defendant possessed child pornography. The defendant was not charged with a child pornography crime, and it was error for the court to conclude based upon an unpublished Division I [State v. Mills] case that the defendant, like all child pornographers would likely have photos at any residence he may be found at. There is insufficient facts in the affidavit to the search warrant to establish a proper nexus between items hoped to be seized and the residence and car.

ADDITIONAL GROUND

7. Defendant's counsel failed to put before the court a hearsay objection when Detective Miller testified about what he saw on a computer monitor from an internet based search through a company named "Accurint." Miller testified about the defendant's name, address and telephone number stored in Accurint's database without providing the physical item itself. By presenting oral testimony based on Miller's review of a computer monitor without actually introducing the printouts from the computer, the best evidence rule was violated denying the defendant a fair trial. Detective Miller also testified that he was fully aware that the information stored in Accurint's database might not be correct. There is insufficient evidence in the record to prove that the information stored in Accurint's database was current at anytime the defendant allegedly approached the witnesses and between the time the search warrant was issued. Detective Miller was not a custodian of the Accurint Records, was not qualified to answer questions

about the Accurint system when questioned by the prosecutor and did not work for Accurint where the records were created and stored. Miller had no control over how Accurint compiles it's data, no control over the accurancy of the information that is put into the computer system by others and no control over how the information is collected and stored.

8. the State failed to prove beyond reasonable doubt that the defendant knowingly failed to register with the county sheriff for the county of the defendant's residence as a sexual offender. The defendant was notified by the State of Oregon of his obligation to register. The last notice was signed by the defendant August 15, 2005 which provided, in part, that:

> "If you plan to move out of Oregon, you must report, in person, your prospective out-of-state address to your supervising official or an Oregon law enforcement agency by completing a change of address registration within ten (10) days of your date of move. Pursuant to federal law, you must also contact the appropriate agency in the state to which you have moved within ten (10) days of arriving in that state."

The notice informs the defendant that whatever you anticipated out-of-state address will be, you are required to report that address to your supervising official or law enforcement agency within 10 days of the date that you plan on leaving Oregon. Also, after leaving Oregon you are required to contact the appropriate agency in the new state before the expiration of 10 days. The notice is adequate because the defendant would not have known whether the county sheriff for the county where the defendant was planning to reside was the appropriate agency or whether some other official in a different county was the appropriate agency to contact.

The notice is faulty because it's telling the defendant that if you do one [report in person to your supervising official or Oregon law enforcement agency] then you "<u>also</u>" must do two [contact the appropriate agency in the state to which you have moved within 10 day].

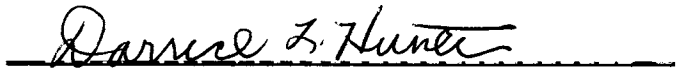
There's no evidence in the record to prove that the defendant changed his residency from Oregon to Washington by completing a change of address registration form with an Oregon law enforcement agency or with an Oregon official charged with the duties of supervising him.

The defendant was detained in the Pierce County Detention Center [PCDC] on January 27, 2007 and May 28, 2009. There's no evidence in the record to prove that before the date of January 27, 2007 the defendant was a resident of Washington. The notice is faulty because any reasonable minded person who had moved to Washington would have to go on a treasure hunt to find the appropriate agency to contact. The notice doesn't tell you who the appropriate agency is and it doesn't tell you anything about where and how to contact the appropriate agency. Part of the warrant authorizes the detective to go in and gather evidence for the investigation of the crime of failure to register as a sexual offender. But ther's nothing in the affidavit or in the record to indicate that evidence relating to that crime was seen inside the residence or car, or that the defendant was seen residing inside the residence. There's absolutely no evidence to show that the defendant or evidence related to that crime would likely be found at the time the warrant is issued.

9. The state failed to prove beyond reasonable doubt that the defendant communicated with a minor for immoral purposes as alleged in count III of the amended information. There's insufficient evidence to prove that the defendant's purpose of meeting with Mary Oh at Clover Park High School was to expose and involve Oh in sexual misconduct. The evidence show that it was the defendant who cancelled meeting with Oh and there's no evidence that would have prove that had the meeting not been cancelled, the defendant would have met with Oh to expose her to sexual misconduct as part of a

modeling interview. Oh testified that she wasn't threatened by the defendant and that she didn't believe that the defendant was asking her for sex or to become involved in activities related to sex.

Dated this 12th day of January 2010.



Darrick L. Hunter, Appellant