

65115-3

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No. 65115-3-1

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

STATE OF WASHINGTON,

Respondent,

v.

ROOSEVELT RAFELO JOHNSON,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
THE STATE OF WASHINGTON FOR KING COUNTY

The Honorable Ronald Kessler

REPLY BRIEF OF APPELLANT

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COURT OF APPEALS
DIVISION ONE

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A. ARGUMENT

THE DECISION IN *STATE v. PATEL* COMPELS THE CONCLUSION THAT MR. JOHNSON WAS NOT GUILTY OF A CRIME

Roosevelt Johnson argued in his opening brief that under the decision in *State v. Patel*, he was not guilty of a crime because the State proved he was attempting to have sex with what he believed was an underage girl but who in reality was an adult police officer. ___ Wn.2d ___, 242 P.3d 856, 861 (2010). The *Patel* Court noted that, contrary to the State's assertion regarding factual impossibility, factual impossibility was simply not a concern in this scenario. *Id.* at 861 fn. 11.

The State takes great pains to unsuccessfully distinguish the decision in *Patel*. Brief of Respondent at 9-11.¹ The State takes great pains to point out that the decision in *Patel* was merely a “plurality decision.” *Id.* at 9. The State is correct in its assertion that Justices Madsen and Charles Johnson, while concurring in the result, specifically rejected the majority assertion that one cannot be convicted of a crime where the “victim” is an adult role-playing as an underage person. *Patel*, 242 P.3d at 862 (Madsen, J., concurring). But these were the lone dissenting justices on this

¹ The State does not contest that the decision in *Patel* would apply to Mr. Johnson: the State merely disputes the correctness of that decision.

point. The remaining concurring justices, Sanders, Owens, and Fairhurst, take no issue with this point when concurring in the judgment. *Patel*, 242 P.3d at 862-66 (Sanders, J. concurring). Thus, despite the State's disagreement with the result of *Patel*, there is a seven justice majority for the proposition that Mr. Johnson was not guilty of a crime, not on the basis of factual impossibility, but on the basis that he committed no crime. *Id.* at 861.

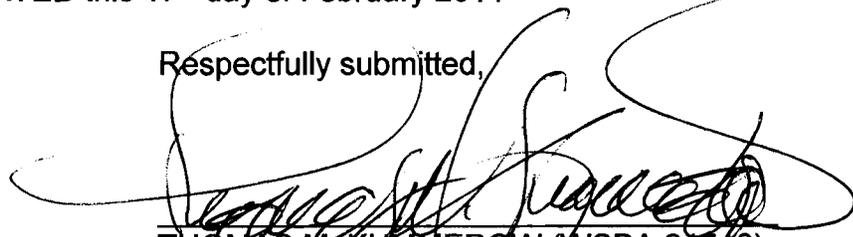
Mr. Johnson is entitled to reversal of his conviction with instructions to dismiss.

B. CONCLUSION

For the reasons stated, Mr. Johns requests that this Court reverse his conviction with instructions to dismiss.

DATED this 17th day of February 2011

Respectfully submitted,



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,
Respondent,
v.

ROOSEVELT JOHNSON, JR.,
Appellant.

NO. 65115-3-I

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<input checked="" type="checkbox"/> ROOSEVELT JOHNSON, JR. 899712 WASHINGTON CORRECTIONS CENTER PO BOX 900 SHELTON, WA 98584	<input checked="" type="checkbox"/> U.S. MAIL <input type="checkbox"/> HAND DELIVERY <input type="checkbox"/> _____

SIGNED IN SEATTLE, WASHINGTON THIS 17TH DAY OF FEBRUARY, 2011.

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