

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

<u>State of Washington,</u>)	
)	
Respondent,)	Court of Appeals Cause No. <u>73702-3-I</u>
)	
v.)	STATEMENT OF ADDITIONAL
)	GROUND FOR REVIEW
)	
<u>Robert Charles Jackson II,</u>)	
)	
Appellant.)	

COURT OF APPEALS DIVISION ONE
 STATE OF WASHINGTON
 2016 SEP 12 AM 11:50

I, Robert Charles Jackson II, have received and reviewed the opening brief prepared 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 I

During closing arguments, the prosecutor said to the jury, “If you believe him, cut him loose.” This summary statement focused the jury on their impression of and feelings about Mr. Jackson, as opposed to the evidence of the case. It also led the jury to believe that the lesser offense of attempting to patronize a prostitute carried no punishment. Even though Mr. Jackson readily admitted to his intent to hire an adult prostitute, from the moment that he was arrested, this statement indicated that if he was not convicted of the offense against a minor, he would not have any consequences for breaking the law. This was simply not true. Additionally, neither party was to indicate the severity of or sentencing for either offense. Had the jury known that Mr. Jackson would go to prison for nearly a year, pay thousands of dollars in fines and court-ordered assessments, and would have an additional three years in community custody and an additional 10 years on the public list of sexual offenders and kidnapers, there is a very good chance that would have also influenced the decision.

Additional Ground II

Even though the entire case was dependent on the use of Craigslist to fabricate a scenario in which men could be charged with a crime which only exists for fabricated scenarios, the prosecutor instructed the jury to disregard the box to click admitting you are over the age of 18. The “Terms of Use Policy” for Craigslist:

LICENSE. If you are 18 or older, we grant you a limited, revocable, nonexclusive, nonassignable, nonsublicensable license to access CL in compliance with the TOU; unlicensed access is unauthorized. You agree not to license, distribute, make derivative works, display, sell, or "frame" content from CL, excluding content you create and sharing with friends/family. You grant us a perpetual, irrevocable, unlimited, worldwide, fully paid/sublicensable license to use, copy, perform, display, distribute, and make derivative works from content you post.

The “Terms of Use” are listed on the website, and users, whether they are reading or posting, must also indicate by clicking that they are indeed 18 or older. This act of clicking is a reminder and a conspicuous, willful connection to the acknowledgement of the user’s age. Additionally, once the user has clicked to read, he or she is once again reminded as he or she posts:

By posting you confirm you are 18 or older, and that if we believe you impersonated someone, or posted their information, you authorize release of your information to the victim, and agree to pay \$1,000 or actual damages, whichever is greater.

Regardless of the fact that Detective Garske was impersonating someone, this was the second conspicuous notice of the Terms of Use that he was given. By instructing the jury to disregard these terms of use, **the State obligates** itself to pursue prosecution of Adult Websites who provide access to any form of adult Internet entertainment, which requires the user to be 18 years or older. Just like this case, minors can just click on a box agreeing they are over the age of 18. Craigslist meets their responsibility for Terms of Use: provide clear and conspicuous terms, require users to expressly and actively manifest their assent to the terms, prohibit the use of the website without assent, and repeatedly have users reconfirm their agreement to the terms. These terms should be enforced, and as someone who also had read and had posted Craigslist ads, Mr. Jackson was well aware of the terms to

which he agreed every time he used Craigslist. He knew that whomever had placed the ad had twice affirmed that he or she was 18 or older. The fact that it didn't support the State's case is not reason enough to instruct the jury to disregard the Terms of Use.

Additional Ground III

The State-appointed defense attorney, Mr. Johnson, appeared in court, but he did little to represent Mr. Jackson's defense:

- Whether in court or through email, Mr. Jackson would point out that evidence was not accurate, testimony and reports were not correct, or he would explain why he thought or behaved in certain ways. These were largely ignored or dismissed. Some of those things include the following:
 - Officer Hassinger's report stated that one of her duties was to communicate that she is "specifically" 15 years old. At no time, in writing or when speaking did she say the word "fifteen" or "15." Furthermore, Officer Hassinger gave a concise report of what she did during my arrest. Months later in a deposition, she added that she changed her voice. I told Mr. Johnson that she did not change her voice.
 - In Detective Garske's witness statement, he says that he informed Robert "of the need of a \$100.00 and my age of 15 (TWICE)." In fact, he NEVER said 15; he says almost 16. He also does not provide a symbol or decimal with the number 100, rendering it a number, not a dollar amount.
 - The copy of the "entire" Craigslist communication, exhibit 8 or 9, was not a print out of the conversation. It had been copied and pasted and altered. The evidence had been changed. Additionally, it can be shown that it's not even an accurate copy and paste by comparing it to any other "anonymous" conversation on Craigslist. Mr. Johnson did not object to the evidence, even though Mr. Jackson told him it was not accurate.
 - Officer Garske was showcased as an "expert" in Craigslist "Casual Encounters." However, the characterization of the men and women who use Casual Encounters was highly biased, as one would expect from an officer who specializes in his field.

- The prosecution was allowed to imply that Mr. Jackson chose this one ad of many to which to respond and take action. However, even though the ads were limited, he responded to three or four other ads.
- Just as the age is never directly stated, there is no agreement for regular, vaginal, anal or any other kind of sex for the money. It was about “getting lovin’.”
- Mr. Jackson’s vision and use of the computer, his established mental processing difficulties and their relationship to his epilepsy, numbers, and blocks of text or speech, and Mr. Jackson’s intentions and thought-processes were minimized and nearly excluded from his defense, yet he was convicted for what the jury believed his intentions to be.
- Mr. Johnson did not object to officers testifying when they said that I said, “Oh shit” at the moment of arrest, but **before** I was read my rights.
- Mr. Johnson did not point out most ads in Exhibit 6 did not list an age. When posting an ad, the age can be left blank.
- Mr. Johnson did not object to Mr. Richie zooming in one character, the number 1, of the whole text. This could have been only for the jury to see and not what the prosecutor wanted to know from the defendant.
- Mr. Johnson did object to or question Detective Garske’s testimony that Mr. Jackson called the undercover police officer prior to arriving at the hotel [Verbatim Report page 258]. The State did not provide any evidence that a prior call was made by Mr. Jackson.
- Closing arguments were atrocious. Mr. Johnson presented two analogies that appeared to be unplanned and in fact supported the State’s case. He also attempted to find meaning in inconsistencies that were not there. (Why no condoms? Up-selling. Etc.) Mr. Jackson had the urge to stop Mr. Johnson’s theatrics mid-closing arguments and give his own closing by simply repeating the truth.
- Throughout the trial, Mr. Johnson seemed to be confused, had trouble communicating clearly, and often had to correct his speech or consult his notes. He had another case he asked to go attend to during this trial. The judge was hesitant; Mr. Johnson had someone else do it. The second day he was exhausted and verbalized that his brain was not clear.

- Mr. Johnson did not advise Mr. Jackson to take the plea bargain offered by the State minutes before trial. Mr. Johnson only said that he was required to tell Mr. Jackson what the State had offered. No attempt at negotiating any other plea bargain was made.
- Mr. Johnson advised Mr. Jackson not to cooperate with the pre-sentencing interview.
- Multiple times during the trial, Mr. Johnson asked Mr. Jackson and others, “How am I doing?” He would share that this case was difficult for him, he was busy, and he was doing the best that he could.

Additional Ground IV

For all of these reasons, any amount of prejudice, misconduct, ineffective assistance, or incorrect instruction in this case is too much. The facts are not nearly as clear cut as the State would like to present, and the evidence is far from over-whelming.

- Though it has often been repeated that the undercover police officers identified themselves as 15 years of age, in fact, and all of the evidence supports, that nobody used the numerical or written form of 15 in any of the correspondence. Detective Garske referred to himself as “almost 16,” and the female officer did not provide an age at all.
 - Dictionary.com defines the word “almost” as “everything but.” They give the example: I paid *almost* nothing for that car.

Giving dictionary.com weight, “almost 16” does not equal 15. Therefore, Detective Garske’s report should be given less weight since he did not truthfully tell Mr. Jackson that he was 15.
- Detective Garske contradicts himself in age with the ad clearly identifying an adult woman and the email containing one phrase that would indicate a minor.
 - It is **reasonable** to assume that anyone posting an ad in any of the “Personals” categories on Craigslist is at least 18 years of age in that in order to merely read the ads from any of the categories; you must first confirm that you are legally an adult.
 - The ad to which Mr. Jackson responded had listed, in the headline, where it asks for your age, the number 20.
 - The only place that contradicts that Mr. Jackson was corresponding with an adult is where Detective Garske wrote “almost 16” in the middle of a large chunk of text. As Detective

Garske explained, through his own confusion, he mistakenly cut and paste that same paragraph twice (in fact, they are not the same). Mr. Jackson's mistaken reading of that phrase is the basis of the entire conviction. In that same chunk of text, Detective Garske also wrote, "I look 25."

- Kristen Stewart, identified as "that girl from twilight" in the email correspondence was born April 9, 1990. She is currently 26 years old. She was 24 years old when Mr. Jackson was arrested; the day Detective Garske offered her as someone he looks like. She was 18 years old when the first of the four-movie series was released.
- Mr. Jackson asked, "Do you still need that lovin'?" In response to the ad's last line "horny girl needs love." He then goes on to say that he "could use some loving [him]self." Detective Garske replied that he needed "at least 100." Though condoms are discussed, words such as sex, money, dollars, or any description of sexual activity or a price list for sexual acts are never referenced in the communication.

Date: September 7, 2016

Signature: Robert Jackson