Supreme Court No. 99303-3

No. 81834-1-I

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

EZRA WRIGHT,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Ezra Wright, appellant below, seeks review of the Court of Appeals decision designated in Part B.

B. COURT OF APPEALS DECISION

Mr. Wright appealed his conviction for attempted rape of a child in the first degree. The Court of Appeals affirmed in an unpublished decision on November 9, 2020. Appendix. This motion is based upon RAP 13.4(b)(1), (2).

C. ISSUES PRESENTED FOR REVIEW

1. Where there is evidence to support the defense theory, the trial court commits reversible error when it fails to instruct the jury as to a legitimate defense advanced by the defendant. Where the evidence showed undercover officers lured Ezra to commit an offense he was not predisposed to commit, did the trial court's refusal to instruct the jury on the defense of entrapment violate the right to a fair trial, and was the Court of Appeals decision thus in conflict with decisions of this Court, requiring review? RAP 13.4(b)(1).

2. The conduct of law enforcement officers may be so outrageous that due process principles bar the government from invoking judicial processes to obtain a conviction. This violates due process when police conduct is not in conformity with a universal sense of fairness. Did the

government conduct here offend due process, and was the Court of Appeals decision thus in conflict with other decisions of the Court of Appeals, requiring review? RAP 13.4(b)(2).

3. This Court should also accept review of the issues raised in petitioner's pro se statement of additional grounds for review.

D. STATEMENT OF THE CASE

1. Introduction

Ezra Wright, a 20-year-old soldier, was serving his country on base at Joint Base Lewis-McChord (JBLM), when he was suddenly arrested in September of 2016. With no experience in the criminal justice system, Ezra was frightened and confused; he immediately cooperated with law enforcement, consenting to a search of his cell phone and his vehicle, as well as his barracks at JBLM. CP 167, 241.

Ezra had been "catfished"[1] by a sting operation conducted by the Washington State Patrol and the Missing and Exploited Children's Task Force (MECTF or task force), assisted by the Washington State Patrol – a "net nanny" sting. RP 434. A female officer, posing as a mother of young children, solicited men to meet her, promising "taboo" sex in return. After Ezra agreed

[1] "A fake or stolen online identity created or used for the purposes of beginning a deceptive relationship." https://www.urbandictionary.com/define.php?term=catfish.

to drive to meet her, he was arrested. Nothing on Ezra's devices or in his barracks suggested he had ever shown an interest in child pornography or underage sex until that day when the police suggested it. RP 415, 425. Nor did the State show that Ezra had a predisposition to commit any crime until the State induced him to.

2. The "Net Nanny" Sting Operation.

The MECTF was created by the Legislature in 1999 to "address the problem of missing children," including those abducted by strangers, due to custodial interference or classified as runaways. RCW 13.60.100. For this reason, the Legislature created "a multiagency task force within the Washington State Patrol." Id. MECTF's authority is limited to assisting other law enforcement agencies upon their request. RCW 13.60.110(2). In addition, MECTF is funded by "public and private grants and gifts to support the work of the task force." RCW 13.60.110(4).

Detective-Sgt. Carlos Rodriguez acknowledged at Ezra's trial that the work of MECTF has evolved from its initial function, which was to save actual children. RP 376-77. At the time of Ezra's arrest in September 2016, the task force in Thurston County was conducting a "proactive undercover operation" – that is, manufacturing artificial situations with fictitious "children." RP 376 ("We were looking to arrest people who were looking to have sex with children").

Rodriguez testified that in a "net nanny" operation, undercover officers are assigned to play all roles, so the personas of the "mother" and any "children" – whether through photographs, voices, or chats – are actors played by undercover officers. RP 378. Rodriguez stated that his task force includes several detectives, along with surveillance, arrest, interview, and forensics units. RP 378, 422.

Rodriguez estimated it takes "50 to 60 people" from various law enforcement agencies to conduct an operation like the net nanny sting in which Ezra was arrested. RP 378. These agencies include the FBI, Homeland Security, the Postal Inspector Service, Thurston County, and WSP. RP 378-79. MECTF relies upon funding from the Department of Justice (DOJ), and local partners like the Internet Crimes Against Children (ICAC) Task Force in Seattle, which requires the task force to follow the ICAC operational standards. RP 416-17.[2]

3. The task force places a false ad on Craigslist to seek out suspects.

On September 9, 2016, Rodriguez's team placed a personal ad in the Casual Encounters section of Craigslist, stating the following:

Family playtime!?!? – w4m.

[2] The ICAC operational standards include the following guidelines, in order to prevent entrapment: "[D]uring online dialogue, officers shall allow the investigative target to set the tone, pace, and subject matter of the online conversation." RP 424.

> Mommy/daughter, Daddy/daughter, Daddy/son, Mommy/son ... You get the drift. If you know what I'm talking about, hit me up, we'll chat more about what I have to offer you.

CP 4; RP 441.

The advertisement was designed to steer Craigslist users who were seeking sexual or intimate encounters into communicating with an undercover detective, who would pose as the "mother" character. RP 363, 377.[3] Once contact was established, the detectives monitoring the chat sessions would attempt to determine which individuals seemed to be interested in sexual contact with minors, and the task force would turn their focus to those individuals as potential suspects. RP 377.

Detective Krista Kleinfelder testified she portrayed the "mother" character named "Hannah" in the ruse, pretending to have three children: two girls, "Anna" (age 11) and "Sam" (age 6), and a boy, "Jay" (age 12). RP 440; Ex. 16 at 12.[4]

4. Ezra responds to the Craigslist ad.

Ezra responds to the above ad on September 9th, at 1:19 p.m., with a request to "Chat now." This initiates the task force's contact with him, and

[3] The term "w4m" was defined by detectives as an abbreviation for "women for men." RP 441.

[4] Exhibit 16, a Cellebrite© extraction report, contains all of the messages sent to and from Ezra's cell phone on the night of his arrest. The messages appear in reverse chronological order.

for the next several hours, Ezra and Detective Kleinfelder ("Hannah)" chat back and forth. Ex. 16. Ezra's texts and emails are light in tone, and he continually diverts the conversation away from the topic of sex. "Hannah" is the first to mention sex, and she consistently attempts to steer Ezra back to a discussion of sex with her fictitious "children." Ex. 16.

Early in the chat, at 1:21 p.m., "Hannah" texts Ezra an ambiguous question, "Did you have experience with younger kids?" Ex. 16 at 12. Ezra responds, "How much experience do you need? And what exactly would I do?" Id. Almost immediately, "Hannah" replies, "I just want someone you [sic] knows how to make it fun for my girls without them experiencing pain." Id. More than 20 minutes elapse before Ezra responds, "What do you want me to do with them?" Id. Sex has not entered into the conversation yet.

The first suggestion of sex is introduced by Detective Kleinfelder, who writes, "I'd like to watch someone have sex with them." Ex. 16 at 12 (line 184, 1:53 p.m.). Ezra never responds to "Hannah's" text about sex. Instead, Ezra continues to send innocuous messages about other topics. Id.

Ezra and "Hannah" spend the next several hours chatting and sending texts and emails. After a discussion concerning pictures of the "children," Ezra encourages "Hannah" to send a picture of herself. Ex. 16 at 11 (lines 172, 173, 2:41 p.m., 2:42 p.m. "What about of you? … and why not?"). The

two spend a great deal of time discussing their various technological challenges with their phones and computers. Id. at 6, 8, 10; RP 446-47.

"Hannah" ultimately sends Ezra a picture of herself and two undercover troopers with Snapchat© filters on their faces, so that they seem to have dog ears and noses, appearing younger. RP 447. Ezra sends a picture of himself and a friend's dog. Ex. 16 at 7. Ezra never sends revealing or inappropriate pictures, nor does he ask for any. He never engages in conversation with "Hannah" that is risqué or off-color; nor does he engage in conversation with the fictitious "children."

Ezra repeatedly tells "Hannah" that he would rather they just meet somewhere else, such as a neutral location, so that he can meet her, the "mother." Ex. 16 at 8. When "Hannah" refuses or changes the subject, Ezra finally says, "I'll have sex with the girls." Id. at 7. This is the first comment Ezra makes that refers to any sexual activity, and it is five hours after Detective Kleinfelder's initial suggestion. Ezra tells "Hannah" he is from JBLM, and that he is only coming to see the 11-year-old. Id. at 5.

During the same time period, Ezra engages in a number of chats with different women. Ex. 16 at 1, 2, 4, 10, 11. At the same time he is talking to

"Hannah," he is negotiating a price for a sexual liaison with a woman named "Amanda" at a different cell phone number. Id. at 1, 2.[5]

5. Ezra arrives to meet "Hannah" at the trap house.

As Detective Kleinfelder directs, Ezra arrives at a local 7-11 where he is observed by the task force surveillance team. RP 382-84, 459. After he arrives at the 7-11, Ezra drives to the apartment he believes is "Hannah's" home; Detective Kleinfelder quickly runs across the parking lot from the command post to the "target apartment" or "trap house." RP 461-62. "Hannah" and Ezra engage in a brief conversation in the doorway of the apartment, where Ezra expresses concern that this feels like a scenario in "To Catch a Predator." RP 463. "Hannah" teases Ezra, asking if he thinks she is pretty enough to be on a TV show; at the same time, the arrest team is hiding in the kitchen. RP 465. "Hannah" leaves Ezra in the hallway of the apartment, so the arrest team can emerge to place Ezra under arrest. Id.

Ezra is charged with one count of attempted rape of child in the first degree. CP 2. He consents to a search of his phone, vehicle, and barracks; no child pornography or anything showing he is interested in minors is found.

[5] The Cellebrite report indicates Ezra was negotiating a price with "Amanda" just before his arrival at the trap house and his arrest. Ex. 16 at 1-2 (lines 3-6, 9-17).

RP 415, 425. He is carrying condoms, due to his upcoming liaison with "Amanda" that evening. Ex. 16 at 1-2.

At trial, Ezra proposed a jury instruction on entrapment, which the court denied. RP 560, 572; CP 90. Without this instruction, Ezra was unable to present a complete defense, and was convicted as charged. CP 159.

The trial court sentenced Ezra to an exceptional sentence below the standard range. CP 240-53. Ezra will be on community custody for the remainder of his life. CP 251-53. Ezra appealed, and on November 9, 2020, the Court of Appeals affirmed in an unpublished decision. Appendix.

He seeks review in this Court. RAP 13.4(b)(1), (2).

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

THIS COURT SHOULD GRANT REVIEW, AS THE COURT OF APPEALS DECISION IS IN CONFLICT WITH DECISIONS OF THIS COURT AND WITH DECISIONS OF THE COURT OF APPEALS. RAP 13.4(b)(1), (2).

1. This Court should grant review because the court's refusal to instruct the jury on entrapment deprived Ezra of his right to present a defense.

Ezra proposed an entrapment jury instruction, because the evidence showed the design for this crime did not originate with him, but with law enforcement. RP 560. This instruction should have been given. Given the circumstances here, the Court of Appeals opinion is thus in conflict with decisions of this Court. RAP 13.4(b)(1).

a. An instruction on entrapment is proper where the criminal design originated in the mind of law enforcement and the actor was lured into committing a crime he did not otherwise intend to commit.

It is an affirmative defense that the criminal plan originated with law enforcement, and that a suspect was lured or induced to commit a crime he would not otherwise have intended to commit. RCW 9A.16.070; State v. Lively, 130 Wn.2d 1, 9-10, 921 P.2d 1035 (1996). Under RCW 9A.16.070, it is a defense where: 1) the criminal design originated in the mind of law enforcement; and 2) the actor was lured or induced to commit a crime which he did not otherwise intend to commit. The defense is not established where law enforcement merely afford an actor the opportunity to commit a crime. RCW 9A.16.070.

WPIC 18.05 indicates the issue of fact is whether there is luring by the police, and whether officers used more than "a reasonable amount of persuasion" to overcome reluctance on Ezra's part.

There was sufficient evidence presented at trial to support the entrapment instruction, between the evidence presented in the State's case, as well as the additional text messages Ezra presented as part of the defense case. Ex. 16; see Lively, 130 Wn.2d at 13; State v. Trujillo, 75 Wn. App. 913, 917, 883 P.2d 329 (1994). The entrapment instruction offered by Ezra provided:

> Entrapment is a defense to a charge of attempted rape of a child in the first degree if the criminal design originated in the mind

> of law enforcement officials, or any person acting under their direction, and the defendant was lured or induced to commit a crime that the defendant had not otherwise intended to commit.
>
> The defense is not established if the law enforcement officials did no more than afford the defendant an opportunity to commit a crime. The use of a reasonable amount of persuasion to overcome reluctance does not constitute entrapment.
>
> The defendant has the burden of proving this defense by a preponderance of the evidence. Preponderance means you must be persuaded, considering all the evidence in the case, that it is more probably true than not true. If you find that the defendant has established this defense, it will be your duty to return a verdict of not guilty.

11 Wash. Prac. Pattern Jury Instr. Crim. WPIC 18.05 (4th Ed); CP 90 (defendant's proposed Instruction 14).

The defendant met his burden to prove the defense of entrapment by a preponderance of the evidence; however, without a jury instruction, the jury was unable to render a fair verdict. Lively, 130 Wn.2d at 13; Trujillo, 75 Wn. App. at 917. Here, the trial court erred in two ways – first, the court improperly weighed the proof and evaluated witness credibility – issues not appropriately before the court in a jury trial. RP 572-73.

Second, the court found the evidence to support entrapment was "quite limited." This, too, was error, in light of a defendant's right to have the jury instructed with an affirmative defense if "some evidence" supports

the instruction. State v. Fisher, 185 Wn.2d 836, 852, 374 P.3d 1185 (2016). Even where evidence supporting an affirmative defense may be "'weak, insufficient, inconsistent, or of doubtful credibility,' the instruction should be given." Id. (quoting U.S. v. Zuniga, 6 F.3d 569, 570 (9th Cir. 1993) (internal quotation omitted)).

The evidence presented was sufficient for the instruction to be given to the jury; the court erred because the jury was not given the proper tools to guide its deliberations.

b. Both prongs of the entrapment defense were supported by sufficient evidence.

The evidence presented at trial showed clearly that the criminal design originated in the minds of MECTF task force officers, not in Ezra's mind. Sgt. Rodriguez testified that the task force is an interagency "proactive" operation that requires "50 to 60" officers to effectuate the arrest of a suspect. RP 376, 378.

Rodriguez detailed the manner in which the MECTF placed an advertisement in Craigslist, designed to search for a particular type of individual. RP 376. Detectives with several decades of law enforcement training and experience work as a team to lure and induce individuals to

respond to the ad, by including language that is deliberately suggestive, but not outright pornographic. RP 440-41.[7]

Once an individual like Ezra was lured into a conversation, the detective portraying the "mother" quickly turned the conversation to sex; Detective Kleinfelder was the first person to refer to sex at 1:53 p.m., and was the only person to refer to sex at all for approximately five hours. Ex. 16 at 12 (line 184). The reference to sex was so fleeting that the detective and Ezra proceeded to chat for another five hours without another reference to it. Ex. 16 at 7-12.

Each time Ezra attempted to steer the conversation to a topic that felt more safe and comfortable to him, the detective returned to talking about sex with her fictional "children." For example, Ezra expressed an interest in seeing a picture of the mother, "Hannah," instead of pictures of the "children." Ex. 16 at 11 (lines 172-73). The detective quickly changed the topic, texting Ezra that she was having trouble with her wifi and could not send pictures for the moment. Id. (line 171); RP 452.[8] When the detective

[7] A sexually inexperienced young person, such as the court found Ezra to be, could have misunderstood the "mother's" vague and ambiguous references to "playtime," and "teaching" her children.

[8] Detective Kleinfelder misread the text messages during her testimony. RP 452. The detective erred when she testified that Ezra texted, "What about you and why not?" in reference to "Hannah" sending a picture of herself, rather than of the "children." RP 452. According to the Cellebrite report, Ezra actually texted, "What about of you and why not?" Ex. 16 at 11 (line 173) (emphasis added). This is a

finally sent Ezra a picture, she ignored his request for a picture of herself, and sent him a picture of the "children" with Snapchat© filters on their faces. Ex. 16 at 9; RP 454. This again pushed Ezra in the direction of the "children," rather than toward "Hannah," the woman Ezra wanted to meet.

As to the second prong, there was ample evidence that Ezra was lured or induced to commit a crime that he had no predisposition to commit before the day the task force entered his life.

First, officers agreed that no evidence showed Ezra had a pre-existing interest in sexual contact with minors. Ezra voluntarily consented to a search of his cell phone, his vehicle, and his barracks at JBLM; no evidence suggested that any child pornography, sex toys, or anything inappropriate was found. RP 415, 425. There was no evidence presented that Ezra had any intention of committing this crime before law enforcement induced him to do so.

In addition, Ezra had a logical and legitimate explanation for the condoms he carried, which was borne out by his cell phone records. Ex. 16. At the same time Ezra was communicating with "Hannah," he was also engaged in several other chats with women on Craigslist. Ex. 16 at 1, 2, 4,

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critical difference when considering whether Ezra had the predisposition to commit this crime against a child and whether he was entitled to the entrapment instruction.

10, 11. Between the time Ezra left JBLM to meet "Hannah," and indeed, even as he approached the "trap house," he was still arranging the terms of his date with "Amanda" for later that evening in Fife. Ex. 16 at 1, 2.

There was more than sufficient evidence that attempted rape of a child was a crime Ezra never intended to commit, until the time experienced law enforcement operatives lured him into doing so. The State provided no evidence that predisposition existed before the net nanny operation entered Ezra's life on September 9, 2016. Whatever foolish choices Ezra made by following the lead of detectives on that day, Ezra's conduct was induced, ultimately, by State experts in manipulation. See, e.g., State v. Chapman, 7 Wn, App.2d 1026, 2017 WL 7362790, *5 (2019).[6]

In Chapman, the Court of Appeals reversed an attempted first degree rape of a child conviction in another net nanny case, where the trial court failed to instruct the jury on entrapment. Id. In facts similar to this case, there was no evidence presented that Mr. Chapman had a predisposition to commit the offense. In determining whether to give the entrapment instruction, the trial court relied upon Mr. Chapman's response to the online ad, his failed opportunities to discontinue the conversation, and his chat with

[6] Unpublished opinions have no precedential authority and are cited to provide guidance to the Court. GR 14.1.

a person he believed to be a minor. State v. Chapman, No. 50089-2-II, Opening Brief at 50 (filed September 20, 2017).

These events, however, took place after law enforcement's intervention, and were part and parcel of the net nanny sting operation. "The relevant time frame for assessing a defendant's disposition comes before he has any contact with government agents, which is doubtless why it's called predisposition.'" (emphasis in original). U.S. v. Poehlman, 217 F.3d 692, 703 (9th Cir. 2000) (citing Jacobson v. U.S., 503 U.S. 540, 549, 112 S.Ct. 1535, 118 L.Ed.2d 174 (1972)).

There was no evidence presented that Ezra was predisposed to commit this offense; conversely, the evidence plainly showed the crime was methodically planned and induced by detectives in Sgt. Rodriguez's task force. Because both prongs were satisfied under RCW 9A.16.070, the court erred when it failed to instruct the jury on entrapment. Lively, 130 Wn.2d at 9-10; Trujillo, 75 Wn. App. at 917.

c. Ezra was entitled to the entrapment instruction; the failure to properly instruct the jury deprived him of the right to present a defense.

"A defendant in a criminal case is entitled to have the jury fully instructed on the defense theory of the case." State v. Fernandez-Medina, 141 Wn.2d 448, 461-62, 6 P.3d 1150 (2000) (quoting State v. Staley, 123 Wn.2d 794, 803, 872 P.2d 502 (1994)); State v. May, 100 Wn. App. 478,

482, 997 P.2d 956. A requested jury instruction must be evaluated by the trial court in the light most favorable to the party requesting the instruction. Fernandez-Medina, 141 Wn.2d at 455-56. In general, "instructions are sufficient if they properly state the applicable law without misleading the jury and permit each party to argue its theory of the case." State v. Scherz, 107 Wn. App. 427, 431, 27 P.3d 252 (2001) (citing State v. Riley, 137 Wn.2d 904, 909, 976 P.2d 624 (1999)). "Some evidence," even where the evidence is not overwhelming, is sufficient for an affirmative defense instruction to be given. Fisher, 185 Wn.2d at 852 (reversing for lack of instruction, even where defendant did not testify).

The right to a fair trial includes the right to present a defense; the Sixth and Fourteenth Amendments of the Federal Constitution, and article 1, sections 21 and 22 of the Washington Constitution, guarantee the right to trial by jury and to defend against the State's allegations. U.S. Const. amends. VI, XIV; Const. art. I, § 21, 22.

The court's erroneous refusal to instruct the jury on the entrapment instruction deprived Ezra of his right to present a defense. U.S. Const. amend. VI; Const. art. I, § 21, 22. Without the necessary instruction, Ezra was unable to argue his affirmative defense of entrapment to the jury. Thus, the Court of Appeals affirmance of the conviction is in conflict with decisions of this Court, and this Court should grant review. RAP 13.4(b)(1).

2. This Court should grant review because the police conduct violated Ezra's right to due process.

Outrageous police conduct that shocks our sense of fairness violates due process and bars the government from invoking judicial process to obtain a conviction. State v. Solomon, 3 Wn. App.2d 895, 909-10, 419 P.3d 436 (2018); Lively, 130 Wn.2d at 19. This issue implicates due process and may be raised for the first time on appeal. Id; U.S. Const. amends. VI, XIV.

a. The government cannot prosecute individuals for offenses it created, or for conduct that violates a fundamental sense of fairness.

A claim of outrageous government conduct is founded on the principle that "the conduct of law enforcement officers … may be so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction." Lively, 130 Wn.2d at 19 (internal quotation omitted). Police conduct violates due process when it shocks a universal sense of fairness. Id. The focus is the government's behavior, not the extent of the defendant's predisposition. Id. at 21.

To determine whether police conduct violates fundamental fairness, several factors are considered: (i) whether government conduct instigated the crime or merely infiltrated ongoing criminal activity, (ii) whether the defendant's reluctance to commit a crime was overcome by pleas of sympathy, promises of excessive profits, or persistent solicitation, (iii)

whether the government controls the criminal activity or simply allows it to occur, (iv) whether law enforcement's motive was to prevent crime or protect the public, and (v) whether the government's conduct itself amounted to criminal activity or conduct repugnant to a sense of justice. Lively, 130 Wn.2d at 22.

Recently, the Court of Appeals found a similar net nanny sting operation constituted outrageous government misconduct in violation of a defendant's constitutional right to due process and fundamental fairness in Solomon. 3 Wn. App.2d at 909-10. In Solomon, the Court affirmed the trial court's dismissal of all counts against the defendant,[7] upholding the trial court's finding that the State had engaged in outrageous misconduct in violation of Mr. Solomon's due process rights.

The circumstances in the sting operation here are consistent with Solomon; this Court should consider the State action in Ezra's case to be fundamentally unfair as well.

b. This government conduct offends fundamental fairness because the police instigated and controlled the activity, and the law enforcement conduct was repugnant to our sense of justice.

[7] Mr. Solomon was charged with communication with a minor for immoral purposes, commercial sex abuse of a minor, and attempted rape of a child in the third degree in Skagit County. Solomon, 3 Wn. App.2d at 897-98. He had responded to a Craigslist ad posted by the task force.

The totality of the circumstances prove the government's conduct here was outrageous. The first factor, whether government conduct instigated the crime or merely infiltrated ongoing criminal activity, points toward outrageous conduct, because the government had no basis to suspect or target Ezra prior to this operation. See Lively, 130 Wn.2d at 22-24 (police aware of no prior criminal activity). Before this operation, there was no evidence to suggest that Ezra was anything but a young soldier serving at JBLM, with no predisposition to anything unlawful. This factor weighs in favor of a violation of fundamental fairness.

The detectives also tightly controlled the activity to lure Ezra in further. When Ezra asked to a picture of the "mother," the detective sent him a picture of the fictitious "children," with Snapchat© filters on their faces, instead. Ex. 16 at 7. When Ezra suggested meeting at a neutral location, the detective threatened to cut off the conversation entirely. Ex. 16 at 3 (lines 30-31). The detective responded that Ezra must either come to her "home," or "this just isn't for you." Ex. 16 at 2-3 (lines 28-29). "Hannah" resisted any attempt by Ezra to arrange a lawful meeting. Id.

In Lively, the Court held the government controlled the criminal activity because police conduct was "so closely related" to the defendant's actions. 130 Wn.2d at 25-26. The same is true here. Law enforcement posted the false ad that prompted Ezra's response; it outlined the terms that it

believed constituted attempted criminal conduct (such as the ages of the "children"); it dictated the media on which the communication continued. Law enforcement particularly set the terms of the eventual meeting. In fact, even more than in Lively, where the police used an informant, the criminal activity here was entirely conducted by police officers themselves. See, e.g., Lively, 130 Wn.2d at 33-34; Solomon, 3 Wn. App.2d at 914.

The next factor looks at whether law enforcement's motive was to prevent crime or protect the public. In Lively, the Court found the government conduct demonstrated greater interest in creating crimes to prosecute than in protecting the public from further criminal behavior, because law enforcement targeted a recovering drug addict who had no known prior connection to the sale of drugs or any other known criminal predisposition. 130 Wn.2d at 26. Here, too, the government's conduct, viewed objectively, created crimes to prosecute.

The Task Force depends on private donations. RCW 13.60.110(4). Those donations will only continue if law enforcement can show results in the form of arrests and prosecutions. See RCW 13.60.110(4) ("The chief of the state patrol shall seek public and private grants and gifts to support the work

of the task force."). In this case and in related cases, the conduct targeted individuals with no known criminal history and no known predisposition.[8]

The Task Force's conduct puts the police "in the position of creating new crime for the sake of bringing charges against a person they had persuaded to participate in wrongdoing." U.S. v. Twigg, 588 F.2d 373, 379 (3d Cir. 1978) (quoting U.S. v. West, 511 F.2d 1083, 1085 (3d Cir. 1975)).

The final factor considers whether the government's conduct itself amounted to criminal activity or conduct repugnant to a sense of justice. The police placed vague advertisements on a free website pursuing anyone who might be curious enough to show up – not limited to sex offenders or those with a predisposition to sexual contact with minors. In this case, the police took playful pictures, including using Snapchat© filters to disguise their own faces. RP 447. The task force distributed pictures of state troopers who seemed youthful and enlisted those troopers in the Task Force. "Hannah" repeatedly deflected Ezra's attempts to elevate the correspondence to a more neutral or non-sexual tone, or to reply to his interest in her as an adult. Even

[8] Drew, Kristen, "WSP arrests 9 in child exploitation operation in Kitsap Co.," KOMO News, http://komonews.com/news/local/wsp-arrests-9-in-child-exploitation-operation-in-kitsap-co-11-21-2015 (Sept. 4, 2015) ("According to the prosecuting attorney, none of the suspects arrested in 'Operation Net Nanny' have any prior felony convictions").

if Ezra's attempts to exit the scheme were not entirely unequivocal, the role of law enforcement is not to lure a reluctant citizen into criminal activity.

Moreover, in operating this scheme, the Task Force completely controls the age of the fictitious minor and the terms of engagement, thereby directing the level of crime with which Ezra and others could eventually be charged. "[W]hen the Government permits itself to become enmeshed in criminal activity, from beginning to end, to the extent which appears here, the same underlying objections which render entrapment repugnant to American criminal justice are operative." Twigg, 588 F.2d at 379 (quoting Greene v. United States, 454 F.2d 783, 787 (9th Cir. 1971)).

On the whole, the government's conduct in this net nanny sting was so outrageous that it violates the common sense notion of fundamental fairness. Due to the violation of due process, and because the Court of Appeals opinion is thus in conflict with its opinion in Solomon, this Court should grant review. RAP 13.4(b)(2).

3. This Court should grant review of and consider each of Ezra's pro se statement of additional grounds for review raised in the Court of Appeals.

This Court should grant review of each of the several additional grounds raised in the pro se Statement of Additional Grounds, including the violations of the Washington Privacy Act, outrageous government conduct, the court's failure to instruct the jury on entrapment, and the State's failure to

comply with the ICAC standards. Ezra contends the Court of Appeals decision is in conflict with decisions of this Court, and with decisions of the Court of Appeals. RAP 13.4(b)(1), (2).

F. CONCLUSION

For the above reasons, the Court of Appeals decision should be reviewed, as it is in conflict with decisions of this Court and with decisions of the Court of Appeals. RAP 13.4(b)(1), (2).

DATED this 9th day of December, 2020.

Respectfully submitted,

s/ Jan Trasen

_____

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APPENDIX

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. EZRA DANILO WRIGHT, Appellant.	No. 81834-1-I DIVISION ONE UNPUBLISHED OPINION

SMITH, J. — Ezra Wright appeals his conviction for attempted rape of a child after he was arrested in a sting operation conducted by the Missing and Exploited Children's Task Force (MECTF). He contends that the trial court erred by declining to instruct the jury on entrapment and that the government engaged in such outrageous conduct that due process barred his conviction. In a statement of additional grounds (SAG), he also contends that (1) the trial court abused its discretion by revoking Wright's access to social media as part of the felony judgment and sentence and (2) MECTF's sting operation used fictional children to cause the imposition of an unfairly long sentence.

We conclude that Wright did not present sufficient evidence to require an entrapment instruction and that the State's conduct did not violate due process. Furthermore, we conclude that the facts linking Wright's crime to social media usage are sufficient to permit the restriction of social media and that the fact that there are only fictional victims does not require a lighter sentence under the statutory scheme. Therefore, we affirm.

FACTS

In September 2016, MECTF posted an advertisement in the Craigslist casual encounters section entitled "Family Play Time!?!? – w4m."[1] The ad stated, "Mommy/daughter, Daddy/ daughter, Daddy/son, Mommy/son . . . you get the drift. If you know what I'm talking about hit me up we'll chat more about what I have to offer you."

Wright, a 20-year-old soldier stationed at Joint Base Lewis-McChord, responded to the ad, saying he was interested and asking if they could speak more. Krista Kleinfelder, a member of MECTF posing as "Hannah Jacobs," responded. She wrote, "I'm not interested in RP,[2] only someone serious. [I]'m a single mother of three young kids 13, 11, 6[ ] and looking for someone to teach my kids. . . . this is taboo and not for everyone." She included a phone number that Wright could text her at if he was "serious."

At 1:19 p.m. on September 9, Wright texted Kleinfelder,[3] and the two had the following exchange:

> [Wright:] I'm open to whatever
>
> [Wright:] It depends on what you want out of this
>
> [Kleinfelder:] Did you have experience with younger kids?
>
> [Wright:] How much experience do you need? And what exactly would I do?
>
> [Kleinfelder:] I just want someone you knows how to make it fun for my girls without them experiencing pain

[1] "[W]4m" is an abbreviation that means women for men.
[2] The detective explained RP is an abbreviation for role-playing.
[3] Wright's text records indicate that while he was texting with Hannah, he was also responding to other Craigslist ads to meet up with someone.

[Wright:] What do you want me to do with them?

[Kleinfelder:] I'd like to watch someone have sex with them.

[Wright:] Can you send a picture of them?

When Kleinfelder declined to immediately send a picture of her "children," Wright responded, "What about of you." Kleinfelder sent Wright a picture of herself with two other undercover law enforcement officers posing as her children. The picture had a Snapchat puppy filter applied to it which obscured the officers' faces and made them look younger. Wright replied, "The girl is cute. Do you wanna meet up sometime?" Kleinfelder expressed doubts that he was "for real," and the two had the following exchange:

[Wright:] I'm real

[Wright:] I'm military I'm not supposed to be in this

[Kleinfelder:] not sure what that means

[Kleinfelder:] I have rules the first one is honesty and the next is directness. I don't feel I'm getting either from you. I'm trying to filter out the fakes and I think y [sic]

[Wright:] This is illegal in a lot of ways

[Wright:] We can meet if that makes you feel better

[Kleinfelder:] me and my family live a discreet life filled with taboo. i don't think it's wrong but other do so I have to be careful

[Wright:] I just don't want to get in trouble with the law

[Wright:] Do you want to meet tonight?

[Kleinfelder:] i understand. then this is not for you

[Kleinfelder:] for what?

> [Wright:] Can we at least meet first?
>
> [Wright:] Because I wanna make sure you're not a cop before I agree to this

Kleinfelder asked Wright to send her a picture of him. When he did, she said, "you[']r[e] attractive. [B]ut tell me specifically what you want with me kids," and Wright responded, "I'll have sex with the girls . . . [b]ut not the male." Kleinfelder asked, "How big are you[? T]he six year old is kind of small. I would also require condoms," and Wright responded, "I'm 5'5". I have condoms. Can you send me a pic of just the girls?" He subsequently asked, "Do they both consent to this? They're not gonna tell anyone else?," and Kleinfelder responded, "[T]hey [know] we don't talk about playtime[. W]e have our little secrets. They are both very excited." Wright responded, "When are you available?"

The two arranged to meet up that night. Wright indicated that he was interested in "[j]ust the 11[-year-old] for now." He asked if they could meet in Puyallup, but Kleinfelder indicated he should come to her home in Tumwater. He agreed, saying, "Ok. I hope you're not a cop." He continued to express caution, asking if she and her daughter could come outside first when he got to their home, asking if her home was isolated, and asking if they could meet somewhere neutral first. Kleinfelder answered his questions and said, "It's ok if you don't want to come here. You can walk away I'd understand." He asked if tomorrow worked for her, and she said, "[S]orry [I]'m done with these games." Wright then agreed to come to her home that night.

Around 10 p.m. on September 9, Wright arrived at the address that

Kleinfelder had told him. After meeting Kleinfelder, he went inside the house and was promptly arrested by officers inside. He had a single condom in his pocket and a box of condoms in his car. He was charged with one count of attempted rape of a child in the first degree.

At trial, after the State presented the above evidence, the court heard argument about instructing the jury on entrapment. Wright contended that the fact that Kleinfelder was the one who brought up having sex with the girls, that Wright took several hours to agree to do so, and that at one point Kleinfelder was the one to reinitiate texting after a 30-minute break in the conversation all pointed toward entrapment. The court determined that there was inadequate evidence to support the entrapment instruction and did not provide it to the jury.

The jury found Wright guilty. Wright appeals.

ANALYSIS

Sufficiency of Evidence for Entrapment Instruction

Wright contends that the trial court erred when it declined to instruct the jury on entrapment. We disagree.

We review a trial court's decision regarding jury instructions de novo to the extent it is based on legal conclusions and for abuse of discretion to the extent it is based on factual determinations. State v. Condon, 182 Wn.2d 307, 315-16, 343 P.3d 357 (2015). In determining whether the evidence is sufficient to support a jury instruction on an affirmative defense, we view the evidence in the light most favorable to the defendant. State v. O'Dell, 183 Wn.2d 680, 687-88, 358 P.3d 359 (2015).

The defense of entrapment is defined in RCW 9A.16.070: "In any prosecution for a crime, it is a defense that (a) The criminal design originated in the mind of law enforcement officials, or any person acting under their direction, and (b) The actor was lured or induced to commit a crime which the actor had not otherwise intended to commit." RCW 9A.16.070(1). However, if "law enforcement officials merely afforded the actor an opportunity to commit a crime," the defendant was not entrapped. RCW 9A.16.070(2). Neither the use of a "normal amount of persuasion," nor the use of "deception, trickery, or artifice" by the police is sufficient to establish this defense. State v. Trujillo, 75 Wn. App. 913, 918, 883 P.2d 329 (1994). Furthermore, a defendant must show more than "mere reluctance on [their] part to violate the law" to establish entrapment. Trujillo, 75 Wn. App. at 918.

A defendant is entitled to a jury instruction for an affirmative defense if sufficient evidence supports the defense. State v. Fisher, 185 Wn.2d 836, 848-49, 374 P.3d 1185 (2016). The "defendant must present evidence which would be sufficient to permit a reasonable juror to conclude that the defendant has established the defense of entrapment by a preponderance of the evidence." Trujillo, 75 Wn. App. at 917. The defendant may point to evidence presented by the State to support the instruction but may not point to an absence of evidence. Fisher, 185 Wn.2d at 851.

In this case, Wright failed to point to evidence that could permit a reasonable juror to conclude that he was entrapped. Wright may have established that the criminal act originated in the mind of law enforcement, but he

did not point to any evidence that establishes that he was "lured or induced" to commit the crime. Wright did not express any reluctance to have sex with a girl he thought was 11 years old; he only expressed concern that Kleinfelder was a law enforcement officer and that he would be caught breaking the law. At most, this evidence showed only a "mere reluctance . . . to violate the law." Trujillo, 75 Wn. App. at 918. And while Kleinfelder did deceive Wright, the posting of the ad and the subsequent conversation merely provided Wright with "an opportunity to commit a crime." See RCW 9A.16.070(2). Kleinfelder did not engage in more than a "normal amount of persuasion" and indeed told Wright that she would not be mad if he did not want to go forward. Trujillo, 75 Wn. App. at 918.

Wright contends that Kleinfelder improperly continued to steer the conversation toward sex with the children, but the record does not support this contention. For instance, Wright asserts that when he asked to see a picture of the "mother," Kleinfelder quickly changed the topic and instead sent him a picture of the children. But the record shows that Wright's initial request was for a picture of the children, and he then continued to ask for pictures of both the children and of Kleinfelder. Kleinfelder responded to both of these requests by sending a "family photo." Ultimately, the text conversation does not show that Kleinfelder lured or induced Wright to agree to have sex with a child.

Wright compares this case to State v. Chapman, No. 50089-2-II (Wash. Ct. App. Jan. 23, 2019) (unpublished), http://www.courts.wa.gov/opinions/pdf/D2%2050089-2-II%20Unpublished%20Opinion.pdf. In this unpublished case discussing a similar

sting operation that led to attempted child rape charges, the court held that an entrapment instruction was required where the defendant had presented evidence that he had stopped talking to the fictional mother for two days. Chapman, No. 50089-2-II, slip op. at 5, 10-11. When the fictional mother reinitiated contact, and before he met her and her fictional daughter, he asked her to promise he could have sex with her. Chapman, No. 50089-2-II, slip op. at 5-6. Because the defendant had presented evidence that he did not otherwise intend to commit the crime, he met his burden and was entitled to the entrapment jury instruction. Chapman, No. 50089-2-II, slip op. at 10-11. Here, Wright presented no such evidence. There was no discussion of Wright having sex with the fictional mother, Wright did not express attraction to her, and he expressed a willingness to meet up based only on an agreement to have sex with the 11-year-old. While Wright contends in his brief that he wanted to meet with the mother rather than the daughter, he did not present the jury with any evidence that this was the case.

Finally, Wright contends that the court improperly weighed the proof and evaluated witness credibility. The record does not support this assertion. The court explained its reasoning that the lapse in time in the texts was not significant and that Kleinfelder's text messages discussing sex with children served to clarify her proposal rather than lure Wright. The court did not address witness credibility in its decision to deny the entrapment instruction. The court only considered whether there was sufficient evidence to support the instruction, as required by Fisher, 185 Wn.2d at 848-49. Thus, the court did not err by denying

the entrapment instruction.[4]

Outrageous Government Conduct

Wright contends that the State's conduct in this case was so outrageous that due process should bar the State from seeking his conviction. We disagree.

The question of whether the State has engaged in outrageous conduct in violation of the defendant's due process rights is a question of law. State v. Lively, 130 Wn.2d 1, 19, 921 P.2d 1035 (1996). We therefore review this question de novo. State v. Lyons, 199 Wn. App. 235, 240, 399 P.3d 557 (2017).

The principle of outrageous government conduct focuses solely on the actions of the State and bars the use of judicial processes to obtain a conviction if the State's actions are so shocking that they violate fundamental fairness. Lively, 130 Wn.2d at 19. This doctrine is not triggered by mere deceitful conduct but instead is reserved for the "most egregious circumstances." Lively, 130 Wn.2d at 20. We consider several factors to determine whether police conduct reaches this level: (1) "whether the police conduct instigated a crime or merely infiltrated ongoing criminal activity," (2) "whether the defendant's reluctance to commit a crime was overcome by pleas of sympathy, promises of excessive profits, or persistent solicitation," (3) "whether the government controls the criminal activity or simply allows for the criminal activity to occur," (4) "whether the police motive was to prevent crime or protect the public," and (5) "whether the

[4] Wright further contends in his statement of additional grounds (SAG) that the defendant need not admit a crime to allow the entrapment instruction. Because we affirm the denial of the entrapment instruction on other grounds, we need not address this contention.

government conduct itself amounted to criminal activity or conduct 'repugnant to a sense of justice.'" Lively, 130 Wn.2d at 22 (quoting People v. Isaacson, 44 N.Y.2d 511, 378 N.E.2d 78, 406 N.Y.S.2d 714, 719 (1978)).

In State v. Solomon, we declined to reverse a trial court's determination that there was outrageous State conduct in a similar Craigslist sting. 3 Wn. App. 2d 895, 916, 419 P.3d 436 (2018). In that case, the court found that law enforcement had (1) instigated the criminal activity by not only posting an advertisement on Craigslist, but by then messaging Solomon even after he indicated he would not again contact the poster, (2) engaged in persistent solicitation by continuing to text him after he indicated that he was not interested on seven occasions, and (3) controlled the conduct by initiating most of the texting exchanges and by continuing to string him along over several days. Solomon, 3 Wn. App. 2d at 910-14. Finally, the court found that the law enforcement's conduct was repugnant to a sense of justice because the detective, acting as a 15-year-old, sent explicitly lewd messages to the defendant. Solomon, 3 Wn. App. 2d at 914-15.

The circumstances of this case do not support a finding of outrageous state conduct. The first factor, whether police instigated the crime or merely infiltrated ongoing activity, does not weigh one way or another. While law enforcement arguably instigated the activity by posting the ad and bringing up sex with children, Wright twice initiated communication by voluntarily responding to the ad and sending the first text message after learning what the fictional mother was looking for. The record indicates that MECTF posted ads using

language it found from real ads on Craigslist, which indicates that there may be at least some ongoing criminal activity.

With regard to the second factor, Wright did not express a reluctance to continue, he only expressed concern about being caught by law enforcement. There was none of the persistent solicitation that was present in Solomon, and law enforcement did not have to appeal to sympathy, profit, or other motivators for Wright to agree. The second factor does not indicate that the State's conduct was outrageous.

As to the third factor, law enforcement did not control the conduct. Wright asked Kleinfelder when she was available, and she said she could meet that night. Although she specified the location, Wright agreed to travel there within several hours of their first text messages. Wright contends in his brief and in his SAG that law enforcement controlled the communication by, for instance, steering the conversation toward sex with the daughters and threatening to break off the conversation if he did not agree to meet at her home. However, the record indicates that while Kleinfelder was the first to bring up the question of sex with children, Wright was not averse to the subject, readily asked for more information, and eventually agreed. Furthermore, while law enforcement did set the time and location for the meeting, this was after Wright initially asked when Kleinfelder was available.

Finally, law enforcement did not engage in the lewd, proactive, and extended communications that characterized Solomon but instead arrested someone who fairly readily expressed an intention to have sex with an 11-year-

old. Law enforcement acted with an interest in protecting the public, and their actions are not "'repugnant to a sense of justice.'" Lively, 130 Wn.2d at 22 (quoting Isaacson, 406 N.Y.S.2d at 719). Thus, the fourth and fifth factors both indicate that this was not outrageous State conduct.

Wright makes several additional contentions in his SAG. He contends that the fifth element of outrageous conduct is met because the State conduct amounted to criminal activity. He contends MECTF was violating the Washington privacy act, chapter 9.73 RCW, by recording his conversations. Specifically, RCW 9.73.030(1) provides that it is unlawful to intercept or record any "[p]rivate communication transmitted by telephone . . . or other device" with a device designed to record or transmit that communication without first obtaining the consent of all the participants in the communication. However, our Supreme Court has held that an e-mail sender consents to the recording of the e-mail, because the e-mail user necessarily understands that their message will be recorded on the recipient's computer. State v. Townsend, 147 Wn.2d 666, 676, 57 P.3d 255 (2002). Similarly, the sender of a text message impliedly consents to the recipient's phone recording the text message. State v. Racus, 7 Wn. App. 2d 287, 299-300, 433 P.3d 830, review denied, 193 Wn.2d 1014 (2019). Thus, the State did not violate the Washington privacy act.[5]

Wright also asserts that the State's conduct was outrageous because it

[5] Wright also appears to contend that the post was unlawful because it violates the Allow States and Victims to Fight Online Sex Trafficking Act of 2017, Pub. L. No. 115-164 (2018). However, as Wright notes, this act was passed after the post in his case. Thus, we need not address it.

did not comply with the Internet Crimes Against Children (ICAC) Program Operational and Investigative Standards, which he contends MECTF must comply with. Specifically, he argues that law enforcement "set the tone, pace, and subject matter of the conversation" in violation of the ICAC standards. However, even if we accept this as true, there is no indication that this would make the State's conduct criminal or otherwise so outrageous that it violated Wright's due process rights.

Finally, Wright contends that MECTF, in performing sting operations, has exceeded its statutory authority, because the statute establishing the task force discusses only cases "involving missing or exploited children." RCW 13.60.110. While the statute does not specifically mention stings such as the one that led to Wright's arrest, where no children are involved, Wright does not show that this compromises the constitutionality of his arrest, trial, or conviction. Wright cites State v. Glant, in which the court considered whether a private organization's funding of the task force caused the State's conduct to be so outrageous as to violate his due process rights. 13 Wn. App. 2d 356, 370-71, 465 P.3d 382 (2020). Wright's reliance is misplaced, both because he does not raise similar facts and because the court in Glant concluded that the State action was not improper. 13 Wn. App. 2d at 371.

We therefore conclude that the State's actions did not violate Wright's due process rights and reversal of Wright's conviction is not required.

Social Media Provision of Community Custody

Wright contends that we should strike the community custody condition that bars his access to social media websites, including "[F]acebook, [I]nstagram, [S]napchat, and chat rooms." We disagree.

We review a trial court's imposition of crime-related community conditions for abuse of discretion. State v. Cordero, 170 Wn. App. 351, 373, 284 P.3d 773 (2012). Trial courts may impose crime-related prohibitions on a defendant in community custody. Former RCW 9.94A.505(9) (2015). These prohibitions must be reasonably related to the circumstances of the crime committed by the defendant. RCW 9.94A.030(10); State v. Kinzle, 181 Wn. App. 774, 785, 326 P.3d 870 (2014). We "review[ ] the factual bases for crime-related conditions under a 'substantial evidence' standard." State v. Irwin, 191 Wn. App. 644, 656, 364 P.3d 830 (2015) (quoting State v. Motter, 139 Wn. App. 797, 801, 162 P.3d 1190 (2007), overruled on other grounds by State v. Sanchez Valencia, 169 Wn.2d 782, 791, 239 P.3d 1059 (2010)).

In Irwin, we upheld a restriction prohibiting the defendant from possessing or maintaining access to a computer where the defendant had previously stored child pornography images on his computer. 191 Wn. App. at 658. In this case, although Wright also used a computer as part of his crime, the restriction is much narrower. While social media is an amorphous concept, we note that Craigslist has many features similar to the forums listed in the court's order, including the ability to post text and pictures, and to invite replies to that content. Thus, it was not manifestly unreasonable to conclude that substantial evidence links social

media to Wright's crime. See State v. Riley, 121 Wn.2d 22, 37, 846 P.2d 1365 (1993) (A court abuses its discretion if its decision is manifestly unreasonable.).

Wright disagrees and further contends that the restriction is overly broad, because it would hinder his ability to pursue many legitimate functions on the internet and therefore infringe on his constitutional rights. However, a defendant's constitutional rights during community custody are "'subject to the infringements authorized by the [Sentencing Reform Act of 1981, chapter 9.94A RCW].'" State v. Riles, 135 Wn.2d 326, 347, 957 P.2d 655 (1998) (quoting State v. Ross, 129 Wn.2d 279, 287, 916 P.2d 405 (1996)), overruled on other grounds by State v. Sanchez Valencia, 169 Wn.2d 782, 792, 239 P.3d 1059 (2010). Because the restriction reasonably relates to Wright's crime, the court did not err by imposing it.

Sentencing in Sting Sex Offense Cases With No Victims

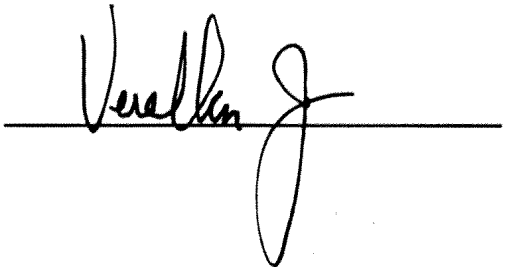
Finally, Wright contends that the prosecutor and law enforcement are abusing their power to increase punishments. He contends that law enforcement purposefully creates younger fictional victims to increase sentences and that law enforcement eliminates the ability to request a special sex offender sentencing alternative (SSOSA) under RCW 9.94A.670.

First, other task force cases do involve fictional children of different ages, which would result in lower sentences. See, e.g., Solomon, 3 Wn. App. 2d at 899. The task force's use of younger fictional children in some cases can be understood as targeted at finding people who are willing to perpetrate more serious crimes.

As to Wright's discussion of SSOSA, this law provides that a defendant can be eligible for a sentence alternative if they meet certain factors, including: "[t]he offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime." RCW 9.94A.670(2)(e). This is the only factor that Wright did not meet, because there is no victim in this case. We have previously stated that in cases with no victims, SSOSA is not available. State v. Willhoite, 165 Wn. App. 911, 268 P.3d 994 (2012); State v. Landsiedel, 165 Wn. App. 886, 269 P.3d 347 (2012). Wright argued before the trial court that the legislature was considering cases involving actual victims when it passed this condition. While this may be the case, the law is nonetheless unambiguous. Wright's contention that the use of fictional victims is exploited to deny access to SSOSA does not acknowledge the fact that if there had been a real victim in this case, he still would not have qualified because he would not have an established relationship with her. The trial court did not err by denying Wright a SSOSA sentence.

We affirm.

WE CONCUR:



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☒ respondent Joseph Jackson
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MARIA ANA ARRANZA RILEY, Legal Assistant Date: December 9, 2020
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