32354-4-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ERIC D. GRAY, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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2. RCW 9.68A.050 is unconstitutionally vague in violation of due process.

3. Under a limited construction of RCW 9.68A.050, the juvenile court deprived Mr. Gray of his right to due process when it entered a conviction based on insufficient evidence.

4. The trial court erred when it entered finding of fact 3 in ruling on the motion to dismiss.

5. To the extent it is deemed to be a finding of fact, the trial court erred when it entered conclusion of law 1 in ruling on the motion to dismiss.

6. To the extent it is deemed to be a finding of fact, the trial court erred when it entered conclusion of law 3 in ruling on the motion to dismiss.

7. To the extent it is deemed to be a finding of fact, the trial court erred when it entered conclusion of law 1 at disposition.

8. To the extent it is deemed to be finding of fact, the trial court erred when it entered conclusion of law 2 at disposition.

II. ISSUES PRESENTED

A. Is any statutory construction of RCW 9.68A.050 necessary where the language of the statute is plain on its face and is neither overbroad nor void for vagueness necessitating a limited construction of its language?

B. Is RCW 9.68A.050 unconstitutionally overbroad where it does not sweep within its prohibitions any protected conduct and is it unconstitutionally void for vagueness where its prohibitions are clear?

C. Was there sufficient evidence to convict Mr. Gray of violating RCW 9.68A.050 where he admitted he sent a sexually explicit photograph of himself to another when he was a minor?

III. STATEMENT OF FACTS

In July 2013, Eric Gray was charged in the Spokane County juvenile court with one count of second degree dealing in depictions of a minor engaged in sexually explicit conduct (RCW 9.68A.050) and one count of telephone harassment. CP 1.

Defendant sent an electronic image via text message of his erect penis to his mother's former employee, Ms. Rupert, who was approximately five years older than him. CP 59; CP 61; CP 65. Defendant was seventeen years old when he sent the picture. CP 61. The text message associated with the image read, "Do u like it babe? It's for you …

And for Your daughter babe."[1] CP 59. These messages were traced back to defendant's telephone. CP 61. When law enforcement contacted the defendant, he admitted that the image was of his erect penis and that he sent the photograph. CP 61.

Defendant moved to dismiss both charges under *State v. Knapstad,* 107 Wn.2d 346, 729 P.2d 48 (1986), alleging the state could not present sufficient facts to establish a prima facie case of guilt for either charge, and that, absent his admissions, the facts of the case were insufficient to establish the *corpus delicti* of the crimes. CP 31-47. The court denied Mr. Gray's motions, finding sufficient evidence to establish prima facie cases for both charges, and further finding independent evidence of the crimes satisfying *corpus delicti*. CP 123-125; (2/28/14) RP 25-27.

After the state agreed to dismiss count two, telephone harassment, and two unrelated counts of indecent exposure, the parties proceeded to a stipulated facts trial on count one, dealing in depictions of a minor engaged in sexually explicit conduct. (2/28/14) RP 28-29; (2/28/14) RP 36-37. Additionally, the defendant stipulated to revocation of his special sex offender disposition alternative (SSODA) on a charge of

[1] Ostensibly, given defendant's age and Ms. Rupert's age, Ms. Rupert's daughter is also a minor, and significantly younger than the defendant.

communication with a minor for immoral purposes before the stipulated facts trial occurred. (2/28/14) RP 27-28; (2/28/14) RP 32.

During the stipulated facts trial, the court considered the affidavit of facts as well as the police reports attached to the state's response brief to defendant's motion to dismiss. (2/28/14) RP 30. The court found Mr. Gray guilty of dealing in depictions of a minor engaged in sexually explicit conduct in the second degree under RCW 9.68A.050(2)(a)(i). CP 126-128; (2/28/14) RP 37. The court considered defendant's mental health diagnosis as a mitigating factor at disposition and sentenced him to credit for time served without any additional supervision, and required him to register as a sex offender. (2/28/14) RP 45-46. Mr. Gray timely appealed.

IV. ARGUMENT

A. RCW 9.68A.050 IS UNAMBIGUOUS AND PROHIBITS ANY PERSON FROM SENDING ANY DEPICTION OF A MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT; RESORT TO STATUTORY CONSTRUCTION IS INAPPROPRIATE WHERE A STATUTE IS PLAIN ON ITS FACE.

Defendant argues that statutory construction is necessary to save RCW 9.68A.050 from unconstitutionality. The meaning of a statute is a question of law reviewed by the court *de novo*. *Dep't of Ecology v. Campbell & Gwinn, LLC*, 146 Wn.2d 1, 11, 43 P.3d 4 (2002). The court's purpose in construing statutes is to ascertain and carry out the intent of the

legislature. *Id.*; *Dep't of Ecology v. City of Spokane Valley*, 167 Wn. App. 952, 961, 275 P.3d 367 (2012). "The surest indication of legislative intent is the language enacted by the legislature, so if the meaning of a statute is plain on its face, the court gives effect to that plain meaning." *State v. Ervin*, 169 Wn.2d 815, 820, 239 P.3d 354 (2010) (internal quotation omitted). In determining a provision's plain meaning, the court looks to the text of the statutory provision in question, as well as "the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Id*.

When a statute is unambiguous, "there is no room for judicial interpretation … beyond the plain language of the statute." *State v. D.H.*, 102 Wn. App. 620, 627, 9 P.3d 253 (2000). However if, after this inquiry, the statute is susceptible to more than one reasonable meaning, the statute is ambiguous and it is appropriate to resort to aids to construction, including legislative history. *Campbell and Gwinn*, 146 Wn.2d at 11. The fact that two or more interpretations are *conceivable* does not render a statute ambiguous. *Five Corners Family Farmers v. State*, 173 Wn.2d 296, 305, 268 P.3d 892 (2011).

The statute prohibiting dealing in depictions of a minor engaged in sexually explicit conduct, RCW 9.68A.050(2)(a)(i), provides:

> A person commits the crime of dealing in depictions of a minor engaged in sexually explicit conduct in the second degree when he or she … knowingly develops, duplicates, publishes, prints, disseminates, exchanges, finances, attempts to finance, or sells any visual or printed matter that depicts a minor engaged in an act of sexually explicit conduct as defined in RCW 9.68A.011(4)(f) or (g).

A minor is *any* person under eighteen years of age. RCW 9.68A.011(5). Sexually explicit conduct, among other things, means "actual or simulated depiction of the genitals or unclothed pubic or rectal areas of *any* minor … for the purpose of sexual stimulation of the viewer. For the purposes of this subsection … it is not necessary that the minor know that he or she is participating in the described conduct, or any aspect of it." RCW 9.68A.011(4)(f) (emphasis added).

Although "a person" is not defined in RCW 9.68A, it is defined in RCW 9A.04.110(17), in pertinent part, as any natural person.[2] The plain language interpretation of "a person" includes any human, whether adult or minor.

Defendant attempts to construct a definition of "a person" that would exclude the "minor" also referred to in the statute, arguing that the legislature could not have intended to penalize a minor person for sending

[2] "Person" is defined as "human, individual;" or "one (a human being, partnership or corporation) that is recognized by law as the subject of rights and duties." Merriam Webster's Collegiate Dictionary 924 (11th Ed. 2003).

a picture of him or herself,[3] and that such an interpretation is necessary to save the statute from the "unconstitutionality" argued by defendant on appeal. Appellant's Br. at 15, 20-22. Resort to any statutory interpretation is inappropriate and unnecessary here.

In reading the plain language of the provision in question it is clear that the legislature intended to ban pornographic material of any minor[4] from being disseminated by any person. Had the legislature intended to restrict the definition of "a minor" in RCW 9.68A.011(5) so as not to include the person distributing the unlawful material, it could have expressly done so.

Furthermore, reading the statutory scheme as a whole – to include related statutory provisions (without resorting to looking at legislative history), it is clear the legislature meant to restrict child pornography to the greatest extent possible. For instance, RCW 9.68A.170, .180, and .190 involve strict prohibitions on duplicating or disseminating such depictions for purposes of prosecutions, defense preparations, and court proceedings. RCW 9.68A.110 expressly enumerates narrow affirmative defenses to

[3] "Indeed it appears that the legislature did not even contemplate the use of the law against a juvenile who produces and disseminates images of his own body." Appellant's Br. at 15.

[4] Child pornography constitutes prima facie contraband; the image itself is prohibited. RCW 9.68A.011(4).

prosecutions under RCW 9.68A, including the statute at issue.[5] Had the legislature intended to create an exception or a defense that would address the circumstance presented here, it certainly could have done so.[6] However, it chose not to do so given its intent to "stamp out the vice" of child pornography "at all levels in the distribution chain." RCW 9.68A.001.[7]

It is logical that the legislature did not create an exception for situations such as this because minors generally do not think of the unintended consequences of their actions. A minor may disseminate a photograph of him or herself to one person believing it will travel no

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[5] RCW 9.68A.110 provides narrow affirmative defenses for certain law enforcement, research, and legislative activities.

[6] In the absence of an ambiguity, the legislature is presumed to say what it means and mean what it says. *State v. Costich*, 152 Wn.2d 463, 470, 98 P.3d 795 (2004). Because the legislature provided very specific exceptions and defenses to the criminal conduct in RCW 9.68A, this court should presume that had the legislature intended to exclude situations where a minor defendant sends a picture of him or herself from the purview of the statute, it would have included specific statutory language to accomplish that goal. It did not do so; thus, the court should not presume it intended to do so.

[7] "The court may not rely on a statement of intent found in a legislative preamble to a statute to override the unambiguous elements section of a penal statute or to add an element not found there." *D.H.*, 102 Wn. App. at 627 (internal citation omitted). The state cites the legislative findings articulated in RCW 9.68A.001 not in an effort to "override the plain meaning of the statute," but rather to demonstrate the congruence of the plain meaning of the statute and the legislative intent.

farther, only to find it posted electronically for others to observe and for child predators to use and further distribute. A strict prohibition on the dissemination of *any* such image by *any* person (including dissemination by the subject of the photograph) meets the goal of preventing the exploitation of children due to the distribution of child pornography. RCW 9.68A.001.

Defendant asserts that a limited construction of the statute to exclude a minor sending a photograph of him or herself is necessary to save the statute from invalidity on overbreadth and vagueness grounds.[8] However, this proposed construction leads to absurd results.[9] [10] For instance, under his interpretation, Mr. Gray would have no criminal

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[8] Overbreadth and vagueness claims are discussed below.

[9] "Although the court should not *construe* statutory language so as to result in absurd or strained consequences, neither should the court question the wisdom of a statute even though its results seem unduly harsh." *Five Corners*, 173 Wn.2d at 311. While penalizing a juvenile for sending a sexually explicit photograph of him or herself may seem "unduly harsh" in some circumstances, the remedy is to address the issue with the legislature, not simply construe the statute in a different way.

[10] Defendant concedes that his limited interpretation of the statute also leads to absurd results, and uses this argument to bolster his position that the statute is facially invalid. Appellant's Br. at 22 n. 7. Defendant's argument regarding facial invalidity is predicated on the assumption (without any supporting law) that a minor has the right to freedom of expression of his or her own body, where the content of the depictions amounts to nothing more than child pornography.

liability for sending a pornographic picture of himself, but the recipient of the material could be charged under RCW 9.68A.070 for possession of depictions of a minor engaged in sexually explicit conduct. Similarly, had Mr. Gray attempted to have the photograph in question reproduced, he would escape criminal liability, but the developer of the photo could be charged with a gross misdemeanor if he or she failed to report the photograph to law enforcement. RCW 9.68A.080. An even more absurd result arises in the context of criminal conspiracies to commit dealing in depictions of a minor engaged in sexually explicit conduct: if two seventeen year olds engage in a conspiracy to sell or distribute pornographic photographs of one of the minors, and each minor is a willing participant in the conspiracy, interested in financial gain, under the defendant's proposed interpretation of the statute, only the minor who was not photographed could be held criminally liable.[11]

Ultimately, as discussed below, the legislature has a compelling interest to prevent the dissemination of child pornography. Resort to any rule of statutory construction is unnecessary in this case. The statute in

[11] Defendant argues that a plain interpretation of the statute leaves it susceptible to arbitrary enforcement prohibited by the vagueness doctrine. Appellant's Br. at 19-20. This is discussed below. As shown by this example, however, defendant's requested interpretation of the statute is susceptible to unjust enforcement and punishment.

question is unambiguous and was clearly intended by the legislature to prevent the distribution of child pornography by any person by any means.

B. RCW 9.68A.050 IS NEITHER UNCONSTITUTIONALLY OVERBROAD NOR VOID FOR VAGUENESS.

Pursuant to article 1, section 1 of the Washington Constitution, the State Legislature is empowered to enact laws to promote the health, peace, safety, and general welfare of the people of the State. *State v. Brayman*, 110 Wn.2d 183, 192–93, 751 P.2d 294 (1988). Broad discretion is vested in the legislature to determine what the public interest demands and what measures are necessary to protect the same. *Id*. at 193.

In *New York v. Ferber*, 458 U.S. 747, 757, 102 S. Ct. 3348, 73 L. Ed2d 1113 (1982), the Court held that child pornography involving *actual* minors is outside the protection of the First Amendment. This standard has been reiterated by the Supreme Court as well as Washington courts, because the prevention of sexual exploitation and abuse of children constitutes a government objective of surpassing importance. *Id*.[12] Thus, restrictions such as those found in RCW 9.68A serve a compelling

[12] *See also, Ashcroft v. Free Speech Coalition*, 535 U.S. 234, 122 S. Ct. 1389, 152 L. Ed2d 403 (2002) (holding virtual child pornography - or depictions of persons appearing to be under the age of 18 – is protected speech under the First Amendment, but that child pornography using real children may be banned without regard to whether it depicts works of value); *State v. Luther*, 157 Wn.2d 63, 134 P.3d 205 (2006); *State v. Myers*, 133 Wn.2d 26, 941 P.2d 1102 (1997).

government and social interest. Of course, such statutes may be subject to overbreadth and vagueness challenges; here, defendant challenges the constitutionality of RCW 9.68A.050 on both grounds.

1. RCW 9.68A.050 is not unconstitutionally overbroad.

Freedom of speech is guaranteed by the First Amendment of the United States Constitution and article 1, section 5 of the state constitution. For statutory challenges on freedom of speech grounds, Washington's analysis of overbreadth under article 1, section 5 follows the analysis under the First Amendment." *Bradburn v. N. Cent. Reg'l Library Dist.,* 168 Wn.2d 789, 804, 231 P.3d 166 (2010). A law is overbroad if it "sweeps within its prohibitions" a substantial amount of constitutionally protected conduct. *City of Tacoma v. Luvene,* 118 Wn.2d 826, 839, 827 P.2d 1374 (1992). Free speech will be protected unless shown likely to produce a clear and present danger of a serious substantive evil that rises far above public inconvenience, annoyance or unrest. *Seattle v. Huff,* 111 Wn.2d 923, 925, 767 P.2d 572 (1989) (quoting *Houston v. Hill,* 482 U.S. 451, 461, 107 S. Ct.2502, 96 L. Ed2d 398 (1987).

Other portions of RCW 9.68A have withstood multiple overbreadth challenges, and the Washington Supreme court has observed that the "legitimate reach of [RCW 9.68A.011(3)] in prohibiting conduct *unprotected* by the First Amendment far surpasses whatever impermissible

application this statute may reach." *D.H.*, 102 Wn. App. at 624 (emphasis added).[13]

Defendant cites *Ferber*, *supra*; *Osborne v. Ohio*, 495 U.S. 103, 110 S. Ct. 1691, 109 L. Ed2d 98 (1990); *Ashcroft v. Free Speech Coalition*, *supra*; and *U.S. v. Williams*, 553 U.S. 285, 128 S. Ct. 1830, 170 L. Ed2d 650, for his proposition that child pornography is excluded from First Amendment protection *solely* based on the physical and psychological harm caused to children in the production of the material, arguing that this concern does not exist when a minor photographs his own body and sends it. Appellant's Br. at 11-14.

However, defendant's argument ignores (1) the fact that child pornography, regardless of who produces it, is not protected by the First Amendment, and (2) the compelling state interest to keep *any* depiction of a minor engaged in sexually explicit conduct from dissemination. The physical and psychological harm caused to children in the production (or re-production) of the material is a compelling government interest that has led the courts to ban all child pornography, regardless of who produces it or distributes it.

[13] *See also State v. Myers*, 133 Wn.2d 26, 34, 941 P.2d 1102 (1997).

As discussed above, the purposeful injection of pornographic images into the electronic or public domain presents a danger to the child depicted as well as other children, even if a child is the disseminator of the material. "Unfortunately, the market for child pornography in this country appears to be flourishing." *See, eg*., *A.H. v. Florida*, 949 So. 2d. 234, 237 (2007) (in prosecution of two minors for sending sexually explicit photos of themselves to each other and to no one else, the court held that the state had a compelling government interest in seeing that pornographic material which could have such negative consequences - to a minor defendant's own psyche, career, or personal life - is never produced).[14] The photo of Mr. Gray, if obtained by a child pornographer, could have market value and be the subject of subsequent dissemination for monetary gain. *Id*.

Defendant argues that RCW 9.68A.050 is facially invalid because it "makes unlawful a substantial amount of *constitutionally protected* conduct." Appellant's Br. at 16 (emphasis added). However, nowhere does defendant establish that pornographic material produced by the minor-child-subject is entitled to any more constitutional protection than similar pornographic material of a child produced by another person (whether

[14] The issue in *A.H. v. State* was whether the minors had a legitimate expectation of privacy to their "intimate" electronic communications to each other. *A.H.*, 949 So. 2d. 234. A compelling state interest is required for restrictions on the expectation to privacy, as it is required for restrictions on freedom of speech.

adult or minor) which is undoubtedly unprotected speech. Defendant further cites to the electronic trend of "sexting" which according to studies is a common occurrence among teenagers[15] [16] to further his claim that a substantial amount of "constitutionally protected conduct" is inhibited by the application of RCW 9.68A.050. Again, this assertion is made without any showing that this child pornography is entitled to constitutional protection.

The prohibition against child pornography, even that which is disseminated by the minor depicted in the image, meets a compelling government interest and is not overbroad so as to unduly infringe on *protected* speech. Pornographic images of actual children have been held, time after time, to be unprotected speech. The image in question here was an image of an actual child. A prohibition on its dissemination, even by

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[15] While "sexting" may be lawful between consenting adults, so long as the images depict adults and not children, RCW 9.68A.050 has the practical effect of prohibiting it between minors (if the images depict minors). However, it is common for the legislature to prohibit certain conduct for children that is lawful for adults – such as the consumption of alcohol. Although no case in Washington has addressed this issue, two minors were prosecuted in *A.H. v. Florida*, *supra*, for this very thing, and their convictions were upheld.

[16] Interestingly, defendant's text message was not to another teenager as is addressed in the studies now referred to by defendant. It was sent to a former employee of his mother, five years his senior, and also addressed to her minor child (who, logically, must be significantly younger than Mr. Gray).

its subject-creator, is not unconstitutionally overbroad, as it does "sweep within its prohibitions" any protected speech.

2. RCW 9.68A.050 is not void for vagueness.

Under the Fourteenth Amendment and article 1, section 3 of the Washington Constitution, a "statute is 'void for vagueness' if it is framed in terms so vague that persons of common intelligence must necessarily guess at its meaning and differ as to its application." *City of Seattle v. Eze*, 111 Wn.2d 22, 26, 759 P.2d 366 (1988). The vagueness doctrine serves two purposes: to provide fair notice to citizens as to what conduct is proscribed and to protect against arbitrary enforcement of the laws. *Id*.

The required degree of specificity is limited in two significant ways: (1) a statute is presumed to be constitutional unless its unconstitutionality appears beyond a reasonable doubt[17] and (2) impossible standards of specificity are not required.[18] *Id*. Consequently, a statute is not unconstitutionally vague merely because a

[17] However, where the statute "concerns material protected under the First Amendment, a vague standard can cause a chilling effect on the exercise of sensitive First Amendment freedoms" and "for this reason, courts have held a stricter standard of definiteness applies if material protected by the First Amendment falls within the prohibition." *State v. Bahl*, 164 Wn.2d 739, 753, 193 P.3d 678 (2008).

[18] "If men of ordinary intelligence can understand a penal statute, notwithstanding some possible areas of disagreement, it is not wanting in certainty." *Eze*, 111 Wn.2d at 27.

person cannot predict with complete certainty the exact point at which his actions would be classified as prohibited conduct. *Id*. at 27. The burden of proving a statute's vagueness rests with the party challenging its validity. *Id*.

RCW 9.68A.050 is not unconstitutionally vague such that ordinary citizens do not know what conduct is proscribed. The language of the statute is clear, and defendant's attempt to place an ambiguity into the plain language of the statute fails, as discussed above. The statute clearly prohibits the distribution of a picture of a minor engaged in sexually explicit conduct, by *any person*. The statute is presumed to be constitutional, and defendant has not met his burden of proving its unconstitutionality beyond a reasonable doubt.[19]

Defendant further alleges that the statute is vague because it is susceptible to arbitrary enforcement. Defendant cites research demonstrating twenty percent of teenagers have sent a self-produced nude image and argues those teenagers never face prosecution, while Mr. Gray

[19] Because child pornography is not material protected by the First Amendment, the stricter standard of definiteness in *Bahl* does not apply.

was prosecuted for the same behavior at the "whim of the state."[20] Appellant's Br. at 20.

However, it is clear from the record that Mr. Gray was not a first time juvenile offender and that the prosecution for this crime was not on a whim; he had several charges of a sexual nature that were dismissed pursuant to the stipulated facts trial, and he agreed to the revocation of his previous SSODA disposition on a misdemeanor sex offense. RCW 9.68A.050 is not subject to arbitrary enforcement any more than other criminal statutes may be, and thus, defendant's argument fails.

C. SUFFICIENT EVIDENCE EXISTED TO CONVICT DEFENDANT OF DEALING IN DEPICTIONS OF A MINOR ENGAGED IN SEXUALLY EXPLICIT CONDUCT; THE TRIAL COURT DID NOT ERR IN ENTERING ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW.

Sufficient evidence existed for the trial court to find Mr. Gray guilty of violating RCW 9.68A.050. He alleges that under his "limited interpretation" of the statute, the trial court erred in finding him guilty beyond a reasonable doubt, as under his interpretation of the statute, the

[20] "A criminal prosecution is presumed to be undertaken in good faith and prosecutors may exercise broad discretion in the charging and prosecution of criminal offenses. *State v. Judge*, 100 Wn.2d 706, 713, 675 P.2d 219 (1984). Exercise of this discretion involves consideration of factors such as the public interest. *Id*. Exercise of this discretion would also involve the enunciated goals of the Juvenile Justice Act, which includes punishment commensurate with the age, crime and *criminal history* of the offender. RCW 13.40.010(2)(d).

minor depicted and the distributor of the image must be two separate individuals. The state would agree that there is insufficient evidence for a conviction under Mr. Gray's "interpretation;" however, his "interpretation" is clearly erroneous as it departs from the plain meaning of the statute's language, and is unnecessary to "save" the statute from unconstitutionality as he argues.

The test for determining the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the state, any rational trier of fact could have found guilt beyond a reasonable doubt. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). All reasonable facts and inferences from the evidence must be drawn in favor of the state and interpreted most strongly against the defendant. *Id*.

In Mr. Gray's case, the undisputed evidence demonstrated that (1) he was a minor; (2) he took a photograph of his own erect penis; (3) he sent it to another person (and her minor daughter) by text message; (4) his message included language asking the recipient if she "liked it;" and (5) these events occurred in the State of Washington on or about the date charged in the complaint. The state met its burden, and Mr. Gray's conviction should be affirmed.

V. CONCLUSION

The state respectfully requests to find that the plain language of RCW 9.68A.050 is unambiguous, and thus, not subject to any statutory interpretation that would allow a minor to send a pornographic image of himself to another person. Further, the state requests the court to find RCW 9.68A.050 is neither overbroad nor void for vagueness; its prohibition is clear and does not burden any constitutionally protected speech or conduct. The state requests this court affirm Mr. Gray's conviction.

Dated this 14 day of October, 2015.

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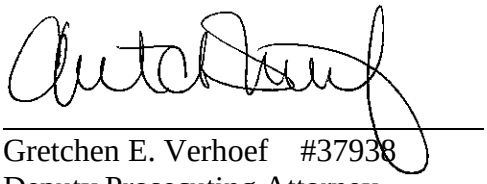

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON, Respondent, v. ERIC D. GRAY, Petitioner,	NO. 32354-4-III CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington, that on October 14, 2015, I e-mailed a copy of the Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Kathleen Shea
wapofficemail@washapp.org

10/14/2015 Spokane, WA Kim Cornelius
(Date) **(Place)** **(Signature)**