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8 IN THE CIRCUIT COURT OF THE STATE OF OREGON FOR LANE COUNTY

9  
10  
11 STATE OF OREGON,  
12 Plaintiff,

13 -VS-

14 ,  
15 Defendant

CASE No. 20-14-

MEMORANDUM OF LAW IN SUPPORT OF  
MOTION FOR JUDGMENT OF ACQUITTAL

16 COMES NOW the Defendant, , by and through his counsel, Terri Wood, and  
17 respectfully submits this Memorandum of Law in support of his Motion for Judgment  
18 of Acquittal on the crime of Online Sexual Corruption of a Child in the First Degree.

19  
20 Summary of Argument

21 ORS 163.433, Online Sexual Corruption of a Child in the First Degree, was  
22 intended to prosecute Internet predators of innocent children, and not the conduct  
23 at issue: using online communications to patronize a teenage prostitute. In particular,  
24 the element of solicitation in the statute should not be construed so broadly as to  
25 reach the conduct proven (by the evidence as viewed in the light most favorable to

1 the State), i.e., to construe inquiries from a prospective customer to be a prohibited  
2 “request” or “invite” to have sex with a purported minor, when a defendant’s  
3 “request” for sexual services is in response to the purported teenage escort’s  
4 advertisement. Because there is no proof that Mr. “seduce[d], lure[d], entice[d],  
5 persuade[d], prevail[ed] upon, coax[ed], coerce[d] or attempt[ed] to do so” in his  
6 online communications with the fictitious prostitute, he did not violate the statute as  
7 a matter of law.  
8

9 This argument is supported by (1) the plain language of the statute;  
10 “request” and “invite” must be read in context with the related terms including  
11 “sexual corruption of a child” and “seduce, lure, entice, persuade, prevail upon, coax,  
12 coerce or attempt to do so”; (2) the legislative history of the statute showing it was  
13 enacted to combat Internet predators who sought out innocent children for sexual  
14 contact—not persons responding to online solicitations from teenage prostitutes;  
15 and (3) the context of the statute, including enactment of ORS  
16 163.413(2013)(purchasing sex with a minor; making it a Class C felony; and  
17 amending ORS 167.008 which had previously made such conduct a Class A  
18 misdemeanor), because the conduct the State is attempting to criminalize by an  
19 expansive reading of ORS 163.433 has been specifically addressed by former ORS  
20 167.008 and current ORS 163.413.  
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2 The Statutes Governing Online Sexual Corruption of a Child

3 ORS 163.433, online sexual corruption of a child in the first degree, provides:

4 (1) A person commits the crime of online sexual corruption of a child in  
5 the first degree if the person violates ORS 163.432 and intentionally  
6 takes a substantial step toward physically meeting with or encountering  
7 the child.

8 (2) Online sexual corruption of a child in the first degree is a Class B  
9 felony.

10 Added by Laws 2007, c. 876, § 3, eff. Jan. 1, 2008.

11  
12 ORS 163.432, online sexual corruption of a child in the second degree,  
13 provides:

14 (1) A person commits the crime of online sexual corruption of a child in  
15 the second degree if the person is 18 years of age or older and:

16 (a) For the purpose of arousing or gratifying the sexual desire of the  
17 person or another person, knowingly uses an online communication to  
18 solicit a child to engage in sexual contact or sexually explicit conduct; and

19 (b) Offers or agrees to physically meet with the child.

20  
21 ORS 163.431(1) provides “ ‘Child’ means a person who the defendant  
22 reasonably believes to be under 16 years of age.”

23  
24 ORS 163.431(5) provides “ ‘Solicit’ means to invite, request, seduce, lure,  
25 entice, persuade, prevail upon, coax, coerce or attempt to do so.”

26  
27 ORS 163.434(2) makes the statute applicable when the alleged victim is an  
28 adult pretending to be a minor: “It is not a defense to a prosecution for online sexual  
29 corruption of a child in the first or second degree that the person was in fact  
30 communicating with a law enforcement officer, as defined in ORS 163.730, or a  
31

1 person working under the direction of a law enforcement officer, who is 16 years of  
2 age or older.”

- 3  
4 1. The plain language of the statute does not apply to persons responding  
5 to online solicitations by teenaged prostitutes.

6 The “cardinal rule” of statutory construction is for the court to uphold the  
7 intention of the legislature if possible. *State v. Gaines*, 346 Or. 160, 165 (2009); ORS  
8 174.020. The Court may consider legislative history in conjunction with the plain  
9 language of the statute and its context in the statutory scheme in question. *Gaines*,  
10 169-171. However, there is no more persuasive evidence of the intent of the  
11 legislature than “ ‘the words by which the legislature undertook to give expression to  
12 its wishes.’ ” *Id.*, at 171.

13  
14  
15 The plain language of the statute describes the crime as “online sexual  
16 corruption of a child.” The common meaning of the phrase “sexually corrupt a child”  
17 is to expose an innocent child to adult sexuality. Simply put, a prostitute is already  
18 corrupted.

19  
20 The “corruption” proscribed by this statute is accomplished by the offender  
21 “solicit[ing] a child to engage in sexual contact or sexually explicit conduct.” ORS  
22 163.431(5) provides “‘Solicit’ means to invite, request, seduce, lure, entice, persuade,  
23 prevail upon, coax, coerce or attempt to do so.” All of the synonyms used to define  
24 “solicit” involve the concept of actively inducing a child to engage in sexual activities,  
25 except “invite” or “request” when those words are given their broadest construction

1 of simply asking or inquiring. “In construing statutes, we do not simply consult  
2 dictionaries and interpret words in a vacuum. Dictionaries, after all, do not tell us what  
3 words mean, only what words *can* mean, depending on their context and the particular  
4 manner in which they are used.” *State v. Cloutier*, 351 Or. 68, 96 (2011). “Invite” and  
5 “request” are part of the definition of the operative term, “solicit”; those illustrative  
6 terms do not constitute alternative means of violating the statute.  
7

8         Responding to a teenage prostitute’s online advertisement with questions about  
9 the goods, services or costs is not an “invite” or “request” within the plain meaning of  
10 “solicit” when read in context with the remaining synonyms, “seduce, lure, entice,  
11 persuade, prevail upon, coax, coerce or attempt to do so.” A person who advertises  
12 services for sale does so as a means of soliciting customers. The customer is the one  
13 who is solicited, not the person doing the solicitation.  
14

15             2.     The legislative history of the statute and a companion measure  
16                    evidence the legislative intent to target adults who sexually corrupt  
17                    minors through the Internet or in person.

18         HB 3515, which became the Online sexual corruption statutes, arose out of  
19 the 2007 public hearing at Aloha High School on “Preventing Internet Predators”.  
20 See Exhibit 113 (bill summaries and written testimony). Bill Carroll with the  
21 Department of Justice testified at the April 6, 2007 House Judiciary Committee bill  
22 hearing about the widespread problem of innocent children who use online services  
23 to communicate with their peers being sought out and solicited by predators for  
24 sexual activities. In his agency’s experience, the usual victim was a 10- to 12-year-  
25

1 old child using social media. Solicitations usually included sending the child sexually  
2 graphic images and conversing with the child about sex. See Exhibit 114 (full audio  
3 recording of hearing; testimony by Carroll at approximately 1:00:00). Assistant  
4 Attorney General Michael Slason submitted written testimony in support of the bill,  
5 explaining “there is no specific statute targeting Internet predators who solicit  
6 children to engage in sexual acts; rather, prosecutors rely on Oregon’s attempt law  
7 to cover conduct that would otherwise fall under that type of statute. Generally  
8 speaking, an attempted crime is designated one class below a completed crime . . . .  
9  
10 HB 3515 specifically targets those who use the Internet to solicit children to engage  
11 in sexual conduct. As a result, the crime is committed at the time the offender  
12 makes the solicitation; the state is not required to wait until the offender takes a  
13 substantial step toward engaging in sexual conduct with the victim.” (Exhibit 113;  
14 referencing what became Online sexual corruption in the second degree).

15  
16 Hearings on HB 3515 were held concurrently with HB 2843, which created the  
17 crime of Luring a Minor, ORS 167.057, committed by furnishing pornography to or  
18 using pornography with a minor for the purpose of inducing the minor to engage in  
19 sexual conduct. AAG Slason’s written testimony on that bill explained: “Sexual  
20 predators use various methods to identify potential victims, from joining online ‘chat  
21 rooms’ frequented by minors to exploiting social networking sites such as  
22 ‘myspace.com.’ Once contact is established, predators groom, or ‘lure,’ their victims  
23 by engaging in a series of activities designed to cultivate a willingness on the child’s  
24 part to engage in sexual conduct with an adult.” See Exhibit 115.  
25

1 Thus, the legislative history of HB 3515 makes clear that its target was  
2 Internet predators of innocent children, and that the statutory scheme was part of a  
3 larger effort that year to create statutes to prosecute all stages of predation by  
4 adults attempting to sexually corrupt minors.

5  
6 3. The context of the statute further supports a narrow reading of the  
7 synonyms “invite” or “request” when the minor is the person initially  
8 and actively seeking contact through online solicitation for customers.

9 “A statute's context includes other provisions of the same or related statutes,  
10 the pre-existing statutory framework within which the statute was enacted, and prior  
11 opinions of this court interpreting the relevant statutory wording.” *Ogle v. Nooth*, 355  
12 Or. 570, 584 (2014).

13  
14 The Oregon Supreme Court in 1917 interpreted ORS 167.230 (since repealed),  
15 which defined the crime of soliciting, procuring or enticing a child under 18 to have  
16 sexual intercourse. *State v. Norris*, 82 Or 680 (1917). In holding that the motion for  
17 directed verdict should have been granted, the Court explained: “The words ‘procure,’  
18 ‘solicit,’ and ‘entice’ as used in pleadings have well-defined meanings and they each  
19 import an initial, active, and wrongful effort. 3 Words and Phrases, 2410; 6 Words and  
20 Phrases, 5653; 7 Words and Phrases, 6548; *Nash v. Douglass*, 12 Abb. Prac. N. S. (N.  
21 Y.) 187. 82 Or at 682.

22  
23 In *City of Portland v. Stevens*, 180 Or. 514, 524 (1947), the Court again  
24 discussed the meaning of the word “solicit,” as well as “entice,” in the context of an  
25

1 ordinance that prohibited persons from soliciting business from pedestrians on public  
2 streets:

3  
4 The words 'solicit' and 'entice', as used in pleadings, import 'an initial,  
5 active and wrongful effort'. *State v. Norris*, 82 Or. 680, 682, 162 P.  
6 859. 'Solicit' is defined as 'to importune'; 'to endeavor to obtain by  
7 asking or pleading'. 'Entice' is defined as 'To draw on by exciting hope  
8 or desire; to allure; attract; as, the bait enticed the fishes. Often in a  
9 bad sense: To lead astray; to induce to evil; to tempt; as, the sirens  
10 *enticed* them to listen'. Merriam's Webster's New International  
11 Dictionary, 1926 Ed.

12 Four years after ORS 163.433 was enacted, the legislature passed ORS  
13 167.008, Patronizing a prostitute (2011; since amended as discussed below). This  
14 statute split the content of the Prostitution statute, ORS 167.007, which had  
15 previously covered as alternate provisions the prostitute's offer or agreement to  
16 engage in sex for a fee and the patron's offer or agreement to pay the fee. In addition,  
17 it created enhanced penalties for patrons of teenage prostitutes, and repeat  
18 offenders, although the crime classification remained a Class A misdemeanor. See  
19 Exhibit 116 (Staff summary of bill).

20 Two years later in 2013, the legislature revisited the problem of teenage  
21 prostitutes and human trafficking, enacting a statute that specifically addresses the  
22 conduct of hiring, or offering or agreeing to hire, a teenage prostitute, making it a  
23 felony, and deleting the sections of ORS 167.008 that had previously addressed the  
24 issue. ORS 163.413, Purchasing Sex With A Minor. A first conviction is a Class C  
25 felony, and the crime is not a "sex crime" requiring sex offender registration unless the  
Court decides that is necessary for the safety of the community. SB 673 B also



1 modified related statutes to permit prosecutors to apply for intercept of wire, oral or  
2 electronic communication to investigate these crimes. See Exhibit 117 (Staff summary  
3 of bill). ORS 163.413 provides a comprehensive list of mandatory and enhanced  
4 penalties for first and repeat offenders, evidencing legislative intent that this statute  
5 govern the punishment of offenders who engage in that conduct.  
6

7 Prior ORS 167.008 (2011) and ORS 163.413 address the specific conduct at  
8 issue in the case at bar, and further evidence that the legislature did not intend ORS  
9 163.433 to reach this conduct. *See also, State v. Guzek*, 322 Or 245, 268  
10 (1995)(“when one statute deals with a subject in general terms and another deals  
11 with the same subject in a more minute and definite way, the two should be read  
12 together and harmonized, if possible, while giving effect to a consistent legislative  
13 policy”).  
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21 ATTORNEY FOR DEFENDANT  
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