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State v. Reed Appellant's Reply Brief Dckt. 38806

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IN THE SUPREME COURT, OF THE STATE OF IDAHO

STATE OF IDAHO,

Plaintiff-Respondent,

v.

BRUCE EDWARD REED,

Defendant-Appellant.

No. 38806

APPELLANT'S REPLY
BRIEF

REPLY BRIEF OF APPELLANT

APPEAL FROM THE DISTRICT COURT OF THE FOURTH JUDICIAL
DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE
COUNTY OF ADA

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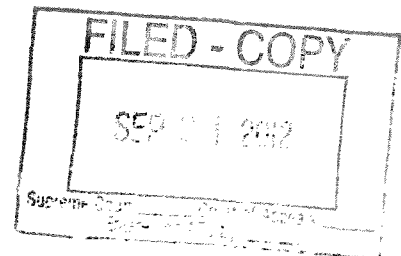


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STATEMENT OF CASE

Nature of the Case

Bruce Reed was convicted of enticing of children over the internet and the district court imposed a unified sentence of eleven years, with two years fixed. On appeal, Mr. Reed asserted that there was insufficient evidence for the jury to find beyond a reasonable doubt that Mr. Reed was using the internet to “solicit, lure, or persuade” a minor child under sixteen to engage in sexual acts and that the district court abused its discretion by imposing an excessive sentence in light of the mitigating factors present in this case. The instant Reply Brief is necessary to address the State’s claim that it met its burden to prove that Mr. Reed committed the offense of enticing a minor child over the internet by merely engaging in inappropriate online communications with an undercover male police officer on the internet.¹

Statement of the Facts and Course Proceedings

The Statement of Facts and Course of Proceedings was articulated in Mr. Reed’s Appellant’s Brief and is incorporated herein by reference thereto.

¹ The State’s response to Mr. Reed’s claim that the district court imposed an excessive sentence upon him does not merit reply.

ISSUES

1. Was there sufficient evidence to prove beyond a reasonable doubt that Mr. Reed was using the internet to “solicit, lure, or persuade” a minor child under sixteen to engage in sexual acts?
2. Did the district court abuse its discretion when it imposed an aggregate sentence of eleven years, upon Mr. Reed, following his conviction for enticing children over the internet?

ARGUMENT

I.

There Was Insufficient Evidence To Prove Beyond A Reasonable Doubt That Mr. Reed Was Using The Internet To “Solicit, Lure, Or Persuade” A Minor Child Under Sixteen To Engage In Sexual Acts

Introduction

Between September 29, 2009 and February 10, 2010 Mr. Reed engaged in online communications with an Ada County police detective who held himself out as a fifteen year old girl. While the chats sometimes dealt with adult oriented subject matter, at no time did Mr. Reed attempt to personally meet “borahjenny” or provide the detective with any of his contact information to facilitate a meeting. Mr. Reed asserts that because he never took a substantial step towards facilitating contact with “borahjenny,” the State failed to meet its burden to prove beyond a reasonable doubt that Mr. Reed was using the internet to “solicit, lure, or persuade” a minor child under sixteen to engage in sexual acts.

A. There Was Insufficient Evidence To Prove Beyond A Reasonable Doubt That Mr. Reed Was Using The Internet To “Solicit, Lure, Or Persuade” A Minor Child Under Sixteen To Engage In Sexual Acts

In its response to Mr. Reed’s argument on appeal, the State merely reiterates the numerous conversations Mr. Reed had with “borahjenny” between September of 2009 and February of 2010, and argues that those online conversations were sufficient to prove that Mr. Reed used the internet intending to “solicit, lure, or persuade” a minor child under sixteen to engage in sexual acts.² At no point in its briefing does the State address Mr. Reed’s argument

² Mr. Reed does not dispute the content of his online communications with “borahjenny,” but as is articulated in his Appellant’s Brief and herein, he asserts that those online communications

that the 2012 amendment to I.C. § 18-1509A, wherein the Idaho Legislature added the following section: “(4) In a prosecution under this section, it is *not necessary* for the prosecution to show an act described in chapter 15, 61 or 66, title 18, Idaho Code, *actually occurred*,” shows that the former statute, under which Mr. Reed is charged, required the prosecution to “show an act” described the relevant criminal statutes “actually occurred;” or something substantially more iniquitous than a simple online communication. See IDAHO CODE § 18-1509A(4) (2012) (emphasis added). Additionally, the State also fails to cite *State v. Glass*,³ much less respond to Mr. Reed’s argument that it is apparent from the *Glass* opinion that a conviction under the former I.C. § 18-1509A requires not only that the suspect engage in a sexually oriented online chat with a minor, but also take a substantial step toward sexual contact.

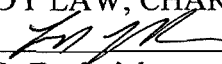
The State’s failure to respond to the totality of Mr. Reed’s substantive arguments on appeal leads to the reasonable inference that the State lacks a cogent basis to challenge Mr. Reed’s legal reasoning. As such, Mr. Reed asks this Court to vacate his conviction for enticing of children over the internet

CONCLUSION

Mr. Reed respectfully requests that this Court vacate his conviction. Alternatively, he asks that this Court reduce his aggregate sentence to eight years.

DATED this 20th day of September, 2012.

BRADY LAW, CHARTERED


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were not sufficient to prove he was using the internet to “solicit, lure, or persuade” a minor child under sixteen to engage in sex acts.

³ *State v. Glass*, 146 Idaho 77 (Ct. App. 2008).

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 20th day of September, 2012, I caused a true and correct copy of the foregoing document to be served upon the following person(s) in the following manner:

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- U.S. Mail, Postage Prepaid
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