

**IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KITSAP**

STATE OF WASHINGTON, Plaintiff, v. HOUSTON WADE, Defendant.	NO. 25-1-01060-18 DEFENDANT'S MOTION FOR SUPPRESSION AND DISMISSAL
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I. IDENTITY OF MOVING PARTY

HOUSTON WADE, by and through his attorneys, Dawn Farina, Shannon Polley and Kayleigh Mattoon of PUGET LAW GROUP respectfully requests the relief designated in Part II.

II. ISSUE AND STATEMENT OF RELIEF SOUGHT

1. Should this court suppress all evidence derived from the NCIS investigation, and subsequently dismiss the charges, where the NCIS investigator violated the Posse Comitatus Act by investigating a civilian without local law enforcement agency participation, thereby requiring suppression of all evidence as fruits of the poisonous tree.

III. INTRODUCTION

This case was initiated by a Special Agent (SA) of the Naval Criminal Investigative Service

1 (NCIS), a component of the Department of the Navy. According to the probable cause statement,
2 SA Main completed an Internet Crimes Against Children (ICAC) certified chat class and then
3 began undercover contact with a person alleging to be Defendant Houston Wade on August 29,
4 2025, without any direction or involvement from any civilian agency. SA Main continued that
5 undercover investigation independently for approximately eighty-seven (87) days before turning
6 over the investigation to the Bremerton Police Department (BPD) on November 24, 2025.

7 Defendant is a civilian. The probable cause statement identifies no military personnel, no
8 military property, and no military installation connected to this investigation. NCIS had no
9 legitimate independent military purpose for targeting this defendant.

10 Federal law and binding Ninth Circuit authority prohibit NCIS agents from acting as
11 undercover investigators in civilian law enforcement operations that lack a military nexus. SA
12 Main's conduct violated that prohibition. Under Washington law, suppression is required where a
13 violation constitutes an unauthorized assertion of military authority. That standard is met here. All
14 evidence derived from the NCIS investigation must be suppressed, and the charges should be
15 dismissed.
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17 **IV. FACTS SUPPORTING MOTION TO SUPPRESS AND DISMISSAL**

18 The following facts are drawn from the probable cause statement and the discovery
19 materials provided to defense counsel to date.

20 The NCIS investigation originated on August 29, 2025, after SA Kelsey Main, employed
21 by NCIS, began investigating possible chats on a social media platform after attending an Internet
22 Crimes Against Children Certified UC Chat class. On August 29, 2025, SA Main initiated
23 undercover contact with an individual claiming to be Mr. Wade. During that period, the SA
24 continued chat communications with this individual, including sending altered photographs.
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1 Between August 29, 2025, and November 24, 2025, SA Main continued these chat
2 communications posing as an eleven-year-old child without involving local law enforcement.

3 SA Main authored a report as a result of her chats and directed that report to the
4 Command/Department of the Navy. She documented her findings and investigation under Control:
5 24NOV25-NWBR-00138-8ENA, which identifies the Naval case number. SA Main briefed
6 Armed Forces America Supervisory Special Agent Devnich regarding her findings.

7 On November 3, the SA contacted Officer Brandon Smith from the Bremerton Police
8 Department (BPD). SA Main informed Officer Smith that she was chatting with “an individual”
9 while undercover. On November 24, eighty-seven (87) days after SA Main began her
10 investigation, SA Main referred the case to BPD and provided two pictures sent to the SA’s 11-
11 year-old persona. Despite not knowing his exact identity, SA Main determined he was professor –
12 not a military member. Per Officer Smith’s report:

13
14 On [November 25, 2025], SA Main documented her chats with the suspect and
15 sent me the probable cause statement for a violation of RCW 9.68A.090
16 Communication with minor for immoral purposes. She also provided the
following case number 24NOV25-NWBR-00138-8ENA for her report. For this
PC statement, see attached media.

17 Using her PC documentation, I applied for and was granted multiple search
18 warrants.

- 19 1 – Search warrant for the pulse_of_life_ Kik account (warrant number:
20 2025046718)
21 2 – Search warrant for electronic tracking
22 3- Search warrant for Comcast IP address (still under judicial review)

23 By all available evidence, SA Main conducted an NCIS investigative operation without
24 any preceding or parallel civilian investigation. Moreover, from Officer Smith’s report, it is clear
25 that SA Main initiated any surveillance into the person she believed to be the defendant. BPD’s
investigation was initiated as clear and direct result of SA Main’s investigation. BPD relied entirely

1 upon the NCIS investigation and SA Main – not a BPD civilian officer, provided the probable
2 cause statement. Absent SA Main’s overreach and military involvement, BPD would have no basis
3 to investigate the defendant or obtain search warrants into highly sensitive information. SA Main’s
4 investigation was a significant overreach of military power; suppression and dismissal is the only
5 remedy.

6 I, Dawn Farina, do certify under penalty of perjury under the laws of the State of
7 Washington that the foregoing is true and correct to the best of my knowledge. (RCW 9A.72.085).

8 /s/ Dawn Farina	July 28, 2026,	Tacoma, WA
9 Dawn Farina	Date	Place of Signature
10 WSBA #18333		

11 **V. LEGAL STANDARDS**

12 **A. The Posse Comitatus Act Applies**

13 The Posse Comitatus Act (PCA), 18 U.S.C. § 1385, prohibits use of the Army and Air
14 Force in civilian law enforcement. The Washington Supreme Court has held that the PCA's text
15 does not extend to the Navy by its terms. *State v. Short*, 113 Wn.2d 35, 38-39, 775 P.2d 458 (1989).

16 However, 10 U.S.C. § 375 directs the Secretary of Defense to issue regulations prohibiting
17 members of the Army, Navy, Air Force, and Marine Corps from directly participating in searches,
18 seizures, arrests, or similar law enforcement activities. The Department of Defense implemented
19 that directive through DOD Directive 5525.5 and the prior regulation at 32 C.F.R. § 213.10(a)(3)
20 (1982). The Secretary of the Navy adopted the same restrictions in substantially identical form
21 through SECNAVINST 5820.7C. *Short*, 113 Wn.2d at 38-39 (noting 10 U.S.C. § 375 is a
22 "corollary to the posse comitatus act").
23

24 Both the prior regulation and DOD Directive 5525.5 expressly prohibit the "[u]se of
25 military personnel for surveillance or pursuit of individuals, or as informants, undercover agents,

1 investigators, or interrogators." 32 C.F.R. § 213.10(a)(3)(iv) (1982); DOD 5525.5 § E4.1.3.4.
2 These restrictions apply to NCIS and its civilian agents as a matter of binding federal law and
3 Navy policy. *United States v. Dreyer*, 804 F.3d 1266, 1272-74 (9th Cir. 2015) (en banc).

4 By all available information, SA Main had no civilian or civilian law enforcement
5 connection for eighty-seven (87) days of her investigation. There is evidence to suggest SA Main's
6 actions violate the Posse Comitatus Act and the DOD directives set forth in military law.

7 **B. NCIS Civilian Agents are Bound by PCA-Like Restrictions**

8 The Ninth Circuit previously held that NCIS civilian agents are subject to PCA-like
9 restrictions under § 375. *Dreyer*, 804 F.3d at 1272-74. NCIS is not exempt because its agents are
10 civilians. The relevant inquiry is whether the agent represents and furthers the interests of the
11 Navy. *Id.* at 1273-74 (quoting *United States v. Chon*, 210 F.3d 990, 993-94 (9th Cir. 2000)).

12 From all discovery provided, it is clear SA Main's reports and investigations were solely
13 within NCIS' custody. They were not provided to BPD – the civilian agency, for almost three
14 months. SA Main only updated other NCIS staff and agents when soliciting and sending pictures
15 while undercover. None of her actions were done at the direction of or with the knowledge of a
16 civilian agency; SA Main's actions solely furthered the Navy's interests.

17 **C. The Independent Military Purpose Exception**

18 NCIS investigations are permissible where undertaken for an independent military
19 purpose, such as recovering military property, investigating UCMJ violations by service members,
20 or protecting military installations. *Dreyer*, 804 F.3d at 1275-76; *Chon*, 210 F.3d at 993-94; *United*
21 *States v. Hitchcock*, 286 F.3d 1064, 1069-70 (9th Cir. 2002). Where an investigation lacks any
22 such nexus and instead targets civilians for civilian prosecution, the independent military purpose
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1 exception does not apply. *Dreyer*, 804 F.3d at 1275-76. There is no evidence that SA Main had an
2 independent military purpose to investigate Mr. Wade.

3 **D. The Washington State Standard for Suppression**

4 Under Washington law, evidence obtained in connection with a § 375 or PCA-like
5 violation is suppressed where there is: (1) an unauthorized assertion of military authority; or (2) a
6 demonstrated need for exclusion as a deterrent to future violations. *State v. Valdobinos*, 122 Wn.2d
7 270, 277, 858 P.2d 199 (1993); *Short*, 113 Wn.2d at 40. These are alternative grounds -- satisfying
8 either one is sufficient to warrant suppression. Furthermore, all information ascertained as a result
9 of the PCA-like violation should be suppressed as fruits of the poisonous tree.

10 **VI. ARGUMENT**

11 The controlling question is whether the NCIS SA Main's conduct had a legitimate
12 independent military purpose. *Dreyer*, 804 F.3d at 1275-76. Where an investigation is "reasonably
13 tied to military bases, military facilities, military personnel, or military equipment," it may fall
14 within the recognized exception. *Id.* at 1276. Where it does not, the investigation violates PCA-
15 like restrictions. *Id.*

16 On the record available, this investigation had no military nexus. SA Main targeted a
17 person she believed to be a civilian defendant through an undercover chat investigation and then
18 pursued that independent investigation for almost three months. SA Main identified no military
19 personnel, no military installation, and no UCMJ interest. Despite knowing there was no military
20 nexus, SA Main continued an independent and concealed investigation without informing any
21 civilian agency. Moreover, SA Main used an ICAC chat methodology developed for and
22 administered by civilian law enforcement. This is not a case where NCIS was investigating service
23 members or protecting military property.
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1 SA Main's conduct falls within the express prohibition on acting as an undercover agent
2 without a military nexus. DOD 5525.5 § E4.1.3.4 identifies as prohibited direct assistance the
3 "[u]se of military personnel for surveillance or pursuit of individuals, or as undercover agents,
4 informants, investigators, or interrogators." An 87-day independent undercover investigation is not
5 passive monitoring or a mere referral; nor were SA Main's actions passive when she initiated
6 conversations, solicited photographs, or sent altered photographs. It is active investigation, which
7 the directive expressly prohibits. *See Dreyer*, 804 F.3d at 1275 ("Activities which constitute an
8 active role in direct law enforcement [include] investigation of a crime.") (quoting *United States*
9 *v. Red Feather*, 392 F. Supp. 916, 925 (D.S.D. 1975)).

10 *State v. Short* does not require a different result. In *Short*, the NCIS instigated a joint
11 operation with local law enforcement in a venue where approximately 80 percent of patrons were
12 military personnel, and the investigation served a legitimate military interest in drug activity
13 affecting service members. *Short*, 113 Wn.2d at 36-37. The court also relied on the fact that the
14 agent did not exceed the authority of a private citizen and did not arrest the defendant. *Id.* at 40.

15 Here, SA Main operated with no military nexus, no civilian law enforcement coordination,
16 and no civilian oversight for 87 days. Those facts distinguish *Short*. There is no evidence SA Main
17 operated with any military authority and all evidence promulgated to the defendant is from civilian
18 and state agencies. SA Main's report is captioned differently to Bremerton PD's captioning and
19 was clearly part of a separate case number and filing system. This is evidenced by Officer
20 Brandon's Smith police report, B25006295:
21

22 On 11/25/2025, SA Main documented her chats with the suspect and sent me the
23 probable cause statement for a violation of RCW 9.68A.090 Communication
24 with minor for immoral purposes. She also provided the following case number
25 24NOV25-NWBR-00138-8ENA for her report. For this PC statement, see
attached media.

1 SA Main's conduct also constitutes an unauthorized assertion of military authority under
2 the Washington suppression standard. *Short*, 113 Wn.2d at 40; *Valdobinos*, 122 Wn.2d at 277. The
3 prohibition on acting as an undercover agent without a military nexus is expressly stated in DOD
4 5525.5 and confirmed as binding on NCIS by the Ninth Circuit en banc. *Dreyer*, 804 F.3d at 1272-
5 74. An NCIS SA who completes a civilian ICAC training program and then independently
6 conducts a three-month undercover investigation with no military nexus and no civilian oversight
7 is not operating within any authorized scope. That is an unauthorized assertion of military
8 authority.

9 *Valdobinos* is further distinguishable. During *Valdobinos*' arrest, "[i]t is uncontested that
10 at all relevant times the Guardsmen were supervised by local law enforcement authorities." 122
11 Wn.2d 270, 273-74 (1993). Moreover, the Okanogan County drug task force – a civilian group,
12 discovered the criminal activity, initiated the investigation, and ultimately, arrested the defendants.
13 The National Guardsmen simply acted upon the Okanogan drug task force's sole direction. *Id.* at
14 274. Here, the cases are clearly and critically distinguishable.

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16 Unlike *Valdobinos*, SA Main initiated this investigation herself and under no direction from
17 any civilian group, agency, or task force. She then conducted an investigation, solicited
18 photographs, and subsequently sent altered photographs with absolutely no civilian insight or
19 knowledge. For 87 days, SA Main acted wholly independently and did not take instruction or
20 direction, and clearly at all relevant times, SA Main was not "supervised by local law enforcement
21 authorities". *Id.* SA Main conducted the entire investigation into the Defendant and only when
22 probable cause had been established did BPD – a civilian agency – become involved. There is no
23 showing that SA Main was "at all relevant times under the control of, and supervised by local
24 police authorities" and there is absolutely no evidence that SA Main's "services were requested by
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1 the [BPD], and that [SA Main] acted in subordination to, and support of the [BPD].” *Id.* at 278.
2 Finally, it is uncontested that BPD was not present and supervising SA Main as she sent text
3 messages and send pictures pretending to be an 11-year-old child. *Id.*

4 Suppression is also warranted under the deterrence prong. The Ninth Circuit declined to
5 suppress in *Dreyer* because the Navy had acknowledged the violation, was correcting its practices,
6 and DOD had issued new regulations. *Dreyer*, 804 F.3d at 1280-81. None of those circumstances
7 apply here. This investigation occurred using a civilian law enforcement training credential, with
8 no identified military purpose.

9 All evidence flowing from SA Main’s investigation must be suppressed. Her undercover
10 communications and investigative work were the foundation for BPD’s investigation. Her
11 investigation violates Washington state law and the Defendant’s constitutional rights and any
12 discovery as a result of her investigation is tainted. Any warrant applications, statements, and
13 digital evidence deriving from that work are tainted. There is no independent source, no inevitable
14 discovery, and no attenuation on the record available. BPD had no independent knowledge of this
15 Defendant before the NCIS referral and were not investigating the Defendant.

16 Where suppression leaves the State without sufficient evidence to proceed, dismissal is
17 required. *State v. Mayfield*, 192 Wn.2d 871, 886, 434 P.3d 58 (2019). This prosecution arose from
18 the NCIS SA's undercover investigation. If the Court suppresses the derivative evidence, the State
19 cannot establish probable cause and the charges must be dismissed.

20 21 VII. CONCLUSION

22 Based on the above argument and authority, Defendant Houston Wade respectfully
23 requests that the Court suppress all evidence derived from NCIS SA Main’s undercover
24 investigation into the individual claiming to be Mr. Wade, including all communications, warrant
25

1 applications, digital evidence, and statements obtained as a result thereof, and dismiss all charges
2 with prejudice. The State cannot proceed without that evidence. Such other relief as the Court
3 deems necessary or appropriate is also requested.

4 DATED this 28th day of July, 2026.

5 PUGET LAW GROUP, LLP

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8 Dawn Farina, WSBA #18333
9 Attorney for Defendant Houston Wade

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11 Shannon Polley, WSBA #62358
12 Attorney for Defendant Houston Wade

13 

15 Kayleigh Mattoon, WSBA #56713
16 Attorney for Defendant Houston Wade