2019 IL App (5th) 160146-U

NO. 5-16-0146

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Randolph County.
	)	
v.	)	No. 14-CF-188
	)	
CURTIS W. PARROTT,	)	Honorable
	)	Eugene E. Gross,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Overstreet and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held*: In a prosecution for indecent solicitation of a child, evidence that the defendant sent graphic photographs and messages to a minor was not sufficient to prove beyond a reasonable doubt that the defendant had the specific intent to commit a sex offense with the minor where there was no evidence that the defendant even suggested an in-person meeting and where additional evidence suggested that he did not intend to meet the minor in person.

¶ 2 The defendant, Curtis W. Parrott, appeals his conviction for indecent solicitation of a child (720 ILCS 5/11-6(a-5) (West 2012)). His conviction was based on a series of sexually explicit online conversations he had with a 15-year-old girl. The defendant argues that the evidence was insufficient to prove beyond a reasonable doubt that he

intended to commit the offense of aggravated criminal sexual abuse because (1) there was no evidence that he attempted to arrange a meeting with the child and (2) he declined when an undercover police officer posing as the girl attempted to arrange an in-person meeting. We reverse.

¶ 3 When the events at issue in this case took place, the defendant was living in a residential facility for developmentally disabled adults in Farmington, Missouri. On May 11, 2014, he initiated contact with 15-year-old E.U. by sending her a friend request on Facebook. E.U. accepted the defendant's friend request, and the two engaged in several chats via Facebook Messenger and three telephone calls. The pertinent online chats took place over a period of two days. Because the contents of those chats are central to the issue in this case, we will set them forth in detail.

¶ 4 During their first online chat, the defendant thanked E.U. for accepting his friend request and told her that he liked meeting new people. He asked what she was doing. When E.U. told him she was cleaning her house and doing yard work, the defendant stated, "I wish I was there helping you." E.U. thanked him and asked him where he lived. The defendant told her that he lived in Florida, although he actually lived in Missouri. He asked E.U. where she lived. She told him she lived in Illinois. We note that he did not ask her to be more specific. We also note that he never informed her that he actually lived in Missouri.

¶ 5 It was at this point that the conversation began to take on sexual overtones. The defendant wrote, "We could have so much fun." When E.U. asked how, the defendant asked her if she swam and if she wore a bikini. When she answered "yes" to both

questions, the defendant responded, "I would love to see you in it." The defendant asked E.U. if she thought he was good-looking, to which she replied, "Kinda, I guess. How old are you?" The defendant told E.U. that he was 33 and asked how old she was. E.U. told him she was 15.

¶ 6 The defendant then asked E.U. about her siblings. She told him that she had a brother and two sisters, including a twin sister. The defendant next asked E.U. if she was "naughty," to which E.U. replied, "Yeah, I guess. LOL." He asked if her twin sister was naughty, and she again replied, "Yeah, I guess." The defendant asked, "Can I get naughty with both of you?" E.U. replied, "Not with her but you can with me I guess."

¶ 7 At this point, the defendant asked E.U. if she had a phone. She told him she had a "house phone," but no cell phone. She then asked, "How big is your……..?" He replied, "10 inches." E.U. asked, "Can I see?" The defendant explained that his phone did not have a camera. Although the conversation moved on to other topics, the defendant sent E.U. a picture of an erect penis during a later online chat.

¶ 8 Shortly after E.U. asked the defendant about the size of his penis, he told her that she could call him if she wanted to do so. She asked for his telephone number, and he provided it to her. E.U. indicated that she could only talk to the defendant for five minutes because she had work to do. However, they continued to chat online after a brief phone call. Many of the defendant's comments to E.U. during this portion of the chat were explicitly sexual in nature. He told her that he wished he was with her so they could "have fun in the bedroom," and he described to her in graphic terms sex acts he would

perform if they were together. He also wrote, "We could have played on the phone before you had to get back to work," to which E.U. replied, "Yeah, maybe later."

¶ 9 Later the same day, the defendant initiated another chat with E.U. online. He made similar sexually explicit comments, telling E.U., among other things, that he would like to watch her and her twin sister "play with each other" and that he wished she were "here" with him so she could "clean [his] pipe." The defendant asked E.U. if she wanted to "play on the phone." E.U. agreed to call him. Phone records admitted into evidence showed that she placed two brief calls to the defendant at that time; however, they did not engage in phone sex.

¶ 10 The defendant engaged in subsequent online chats with E.U. later that night and the following day. During these chats, the defendant told E.U. that he wished she was "here," but he never told her where he was or specifically asked her to meet him. He also described in graphic terms various sexual acts he wished he could perform on her. Among other things, he told her that he wanted to get her pregnant, lick her butt, put his penis in her butt, and have sex with her "every night."

¶ 11 On May 17, 2014, the defendant had another online chat with E.U. This time, they did not exchange any sexually explicit messages. After that, E.U. stopped replying to the defendant's messages until they had one final chat on May 29. The defendant asked E.U. if she was angry at him. She told him she was not angry, but she had a boyfriend and could no longer talk to him. The defendant did not contact E.U. again.

¶ 12 At some point, E.U. told her mother, Terri, about her conversations with the defendant. Terri contacted the police. The defendant was subsequently arrested and charged with indecent solicitation of a child.

¶ 13 While in custody, the defendant waived his *Miranda* rights and gave a statement to police. He filed a motion to suppress that statement, arguing that his waiver was not knowing and intelligent. He alleged that he was unable to understand the explanation of his *Miranda* rights that he was given due to a mental disability. The defendant also filed a motion for an examination to determine whether he was fit to stand trial. The court appointed Dr. Daniel Cuneo to examine the defendant for purposes of both of these motions. In a report of his evaluation, Dr. Cuneo explained that the defendant has an I.Q. of 70 and functions at the level of an 11-year-old child. He determined that the defendant was unable to understand the *Miranda* warnings he received. However, Dr. Cuneo determined that the defendant was able to understand the nature of the proceedings against him and aid counsel in his own defense. The court found the defendant fit to stand trial and it granted his motion to suppress his statement to police.

¶ 14 The defendant waived his right to a jury, and the matter proceeded to a bench trial in November 2015. E.U. testified that her conversations with the defendant took place over Facebook Messenger. She explained that Facebook Messenger automatically "saves everything." Printed copies of the conversations we described earlier were admitted into evidence. A video screen shot of the conversations was also admitted into evidence. On the video, the profile pictures of E.U. and the defendant are clearly visible. E.U. identified the defendant in court as the individual in the profile picture of the person

involved in the Facebook Messenger exchanges at issue. The prosecutor played the video for the court. He stopped the video and asked E.U. to identify a picture of an erect penis that she received. The prosecutor then asked, "And whose Facebook profile did you receive that from?" She replied, "Curtis Parrott."

¶ 15 On cross-examination, E.U. testified that she never met the defendant in person and that neither she nor the defendant even attempted to make plans to meet. She further testified that he never asked for her address and that he told her he lived in Florida. Asked about her phone conversations with the defendant, E.U. testified that they talked about sports and made small talk. On redirect, the prosecutor asked E.U. if she believed the defendant really did want to have sex with her. Defense counsel objected on the grounds that the question called for speculation. The court overruled the objection, and E.U. replied, "I felt he wanted to have sex with me."

¶ 16 The investigating officer from the Illinois State Police, Special Agent Aaron Cooper, testified that he was given permission by E.U. and her mother to use E.U.'s Facebook account to find out whether the defendant would come to Illinois to meet E.U. He testified, "I made several attempts through [E.U.'s] Facebook profile to communicate with Mr. Parrott and have him—or see if he wanted to meet." Officer Cooper clarified that he made two or three attempts. He admitted that he did not document these attempts in his reports. Officer Cooper testified that the defendant responded to his contacts, but none of the conversations resulted in plans to meet.

¶ 17 Finally, the defendant's sister, Amy Lively, testified. Lively explained that the defendant was determined by a Missouri court to be a disabled and incapacitated adult in

2005. She testified that she and her father were appointed to be the defendant's co-guardians and co-conservators at that time. Lively testified that the defendant lives in a residential care facility with 24-hour supervision. She explained that he cannot leave the facility without permission and that she and her father determine who is allowed to take him out of the facility.

¶ 18 The court found the defendant guilty. It explained its verdict from the bench. First, the court found that the defendant was the individual who engaged in the online conversations with E.U. The court then explained, "The question is whether or not he had intent to go further and have—follow through with what he clearly stated in his messages he intended to do." The court found that he did have the requisite intent. In support of this finding, the court emphasized that the defendant sent E.U. a picture of a penis and provided her with a phone number. The court also found that there was no indication that the defendant wanted to have phone sex with E.U. The court concluded that the defendant "did have the intent to take it further based upon the graphic and disgusting nature of the post." The court subsequently denied the defendant's posttrial motion and sentenced him to two years of probation. This appeal followed.

¶ 19 In this appeal, the defendant challenges sufficiency of the evidence. In reviewing such challenges, we must view all of the evidence presented at trial in the light most favorable to the prosecution. The question before us is whether that evidence is sufficient for any reasonable trier of fact to find all of the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). This standard of review

is applicable in a bench trial just as it is in a jury trial. *People v. Arndt,* 351 Ill. App. 3d 505, 512 (2004).

¶ 20 Because we view the evidence in the light most favorable to the prosecution, we must also draw all reasonable inferences in favor of the prosecution. However, we need not—and indeed *may* not—draw inferences in favor of the State that are not reasonable. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). We also note that we must consider all of the evidence in the record, including evidence that is favorable to the defendant. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 21 It is not our function to retry the defendant or reweigh the evidence. The trial court, as the trier of fact, was in a better position than we are to determine the credibility of the witnesses and resolve conflicts in the evidence. *Id*. at 114-15. We will reverse a conviction on the basis of insufficient evidence only if the evidence is so improbable, unreasonable, or unsatisfactory that it raises a reasonable doubt as to the defendant's guilt. *Collins*, 106 Ill. 2d at 261.

¶ 22 To sustain a conviction for indecent solicitation of a child as charged in this case, the State was required to prove three elements: it was required to prove that (1) the defendant knowingly discussed an act of sexual conduct over the Internet with a child or someone he believed to be a child, (2) he did so with the intent that a sex offense occur, and (3) the defendant was at least 17 years old at the time of the offense. 720 ILCS 5/11-

6(a-5) (West 2012).[1] Only one of these elements is at issue in this appeal—the defendant's intent.

¶ 23 Intent may be inferred from evidence of the surrounding circumstances. *People v. Leonard*, 377 Ill. App. 3d 399, 404 (2007). Indeed, circumstantial evidence is usually the only way a subjective mental state such as intent or knowledge *can* be proven. See *People v. Johnson*, 2018 IL App (1st) 150209, ¶ 24; *People v. Jasoni*, 2012 IL App (2d) 110217, ¶ 20. We note that in considering the sufficiency of the evidence to prove the defendant's intent, we apply the same standard of review to circumstantial evidence that we apply to direct evidence. *Leonard*, 377 Ill. App. 3d at 403.

¶ 24 In most solicitation cases, the requisite intent is demonstrated by the fact that a defendant goes to an agreed-upon place at an agreed-upon time to meet the child he has solicited. See, *e.g.*, *Arndt*, 351 Ill. App. 3d at 514-15; *People v. Ruppenthal*, 331 Ill. App. 3d 916, 921 (2002); *People v. Patterson*, 314 Ill. App. 3d 962, 969-70 (2000). However, as the defendant acknowledges, "evidence of that specific action" is not required to support a finding of intent in all cases. *Leonard*, 377 Ill. App. 3d at 404.

¶ 25 In *Leonard*, for example, the defendant engaged in sexually explicit online conversations with an individual he believed to be a 13-year-old girl. *Id.* at 401. The individual was actually an adult male named James Schweitzer. Schweitzer volunteered for an organization that worked to identify adults who used the Internet to solicit

[1]The statute requires the State to prove that the defendant intended that one of three specified sex offenses be committed—aggravated criminal sexual assault, predatory criminal sexual assault of a child, or aggravated criminal sexual abuse. In this case, the charging instrument alleged that the defendant intended that the offense of aggravated criminal sexual abuse be committed.

children. *Id*. at 400-01. During their discussions, the defendant stated that he wanted to engage in oral sex with the 13-year-old girl and that he wanted her to pose nude for him. They discussed arranging a meeting. *Id*. at 401. The defendant provided Schweitzer with two phone numbers. Schweitzer's wife called the defendant at the numbers he provided. *Id*. The defendant told her that he was serious about arranging a meeting. *Id*. at 402. Although no meeting ever took place—and, apparently, no meeting was even arranged—the appellate court concluded that this was sufficient to demonstrate the defendant's intent to engage in oral sex with someone he believed to be a 13-year-old child. *Id*. at 405.

¶ 26 In this case, by contrast, there is no evidence to support a finding of intent. The defendant made no attempt to arrange a meeting with E.U. Unlike what occurred in *Leonard*, the defendant did not specifically suggest that he and E.U. meet in person or tell her that he was "serious" about wanting to arrange a meeting. It is true that the defendant stated several times that he wished he were with E.U., and he described various sex acts he would perform on her if they were together. However, the evidence as a whole suggests that his intent was to fantasize about these sex acts without acting on his fantasies.

¶ 27 Although the defendant's circumstances made an in-person meeting extremely unlikely, some of his conduct made such a meeting even less likely. The defendant made no effort to obtain any information from E.U. that would help him to arrange a meeting. He did not ask where she lived until after she asked where he lived. Even then, he did not request E.U.'s address or ask where in Illinois she lived. When asked where he lived, the defendant told E.U. that he lived in Florida even though he actually lived in Missouri.

When he learned that she lived in the neighboring state of Illinois, he did not correct the record. This evidence suggests that he did not intend to engage in any sexual conduct with E.U. The fact that he did not agree to a meeting when Agent Cooper contacted him using E.U.'s account and made multiple attempts to meet likewise suggests that the defendant did not intend to engage in any of the conduct he discussed with E.U.

¶ 28 The court's conclusion to the contrary rested primarily on the sexually explicit nature of the online conversations themselves. The problem with this rationale is that it completely relieved the State of its burden to prove an essential element of the offense charged. As stated previously, the State must prove *both* that the defendant engaged in an online conversation about a sexual act with an individual he believed to be a child *and* that he did so with the intent that one of the three specified sex offenses be committed. See 720 ILCS 5/11-6(a-5) (West 2012). While it is theoretically possible to discuss sexual conduct in terms that are not graphic or sexually explicit, we doubt that happens very often. Were we to accept the trial court's rationale, the element of intent could be inferred automatically from the evidence supporting the first element of the offense—an online conversation about a sexual act—in nearly all cases. This holding would relieve the State of its burden to prove the element of intent. Such a result would be untenable.

¶ 29 This is not to say the element of intent can never be proven from the words of the defendant alone, as occurred in *Leonard*. We hold merely that that there must be some evidence to show that the defendant intended for the sexual conduct he discussed to actually take place. For the reasons we have discussed, we find no such evidence in this case.

¶ 30 For the foregoing reasons, we reverse the defendant's conviction.

¶ 31 Reversed.