IN THE COURT OF APPEALS OF IOWA

No. 7-499 / 06-1735
Filed August 8, 2007

STATE OF IOWA,
Plaintiff-Appellee,

vs.

ERIC RICHARD HANSEN,
Defendant-Appellant.

Appeal from the Iowa District Court for Black Hawk County, Bruce B. Zager, Judge.

The defendant appeals from his conviction for enticing away a minor. **REVERSED AND REMANDED WITH DIRECTIONS.**

Mark C. Smith, State Appellate Defender, and David Adams, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl Soich, Assistant Attorney General, Thomas J. Ferguson, County Attorney, and Charity McDonnell, Assistant County Attorney, for appellee.

Considered by Mahan, P.J., and Eisenhauer and Baker, JJ.

BAKER, J.

Eric Hansen appeals from his conviction for enticing away a minor, in violation of Iowa Code section 710.10(2) (2005), contending the evidence is insufficient to support the conviction. We reverse and remand with directions.

Background Facts and Proceedings.

On May 22, 2006, officers with the Cedar Falls Police Department were online in an Internet chat room under the assumed identity of a fifteen-year-old girl, when an individual identified by the screen name of "Rick H." began chatting with an officer. Rick H. is the screen name for defendant Eric Hansen. Rick H., who was then twenty-three years old, identified himself as being nineteen-years old and expressed an interest in meeting the supposed fifteen-year-old girl. He indicated he would be able to meet the girl the following day, and asked "what was in it for him."

The defendant then made phone contact with the assumed fifteen-year-old[1] and discussed "messing around." When questioned, he replied that he would "bring something with him." In a later computer conversation, the defendant stated "trust me. I'll bring a full pack."

The defendant again made contact with the assumed fifteen-year-old on May 23 and made arrangements for him to drive from Des Moines to Cedar Falls to meet at the Cedar Falls Wal-Mart. At approximately 9:45 a.m., Cedar Falls police officers arrived at the Wal-Mart and waited until around 10:20 when they observed the defendant's vehicle pulling into the lot. Officers then approached the defendant and asked to speak with him at the police department. The

[1] The defendant was actually speaking to Investigator Kelli Head.

defendant complied with this request. He initially told officers he did not know how old the girl was, but later admitted he believed she was fifteen or sixteen. He also conceded that the "pack" to which he referred meant condoms, but he claimed he only wanted to hang out or go to lunch with the girl.

Based on this incident, the State charged the defendant with enticing away a minor. Following a bench trial on the minutes of testimony, the court found him guilty as charged and sentenced him to a term of imprisonment not to exceed five years, which it suspended. The defendant appeals from his conviction contending the evidence is insufficient to support the charges.

Scope of Review.

Our scope of review of sufficiency-of-evidence challenges is for correction of errors at law. Iowa R. App. P. 6.4; *State v. Thomas,* 561 N.W.2d 37, 39 (Iowa 1997). A verdict will be sustained if it is supported by substantial evidence. *State v. Webb,* 648 N.W.2d 72, 75 (Iowa 2002). In reviewing such challenges we give consideration to all the evidence, not just that supporting the verdict, and view such evidence in the light most favorable to the State. *State v. Schmidt,* 588 N.W.2d 416, 418 (Iowa 1998).

Sufficiency of the Evidence.

On appeal, Hansen emphasizes the distinction between the substantive crime of enticing away a minor, as provided in section 710.10(2), and the crime attempted enticement, as provided in section 710.10(3). Given this distinction, Hansen alleges that the facts, which are largely undisputed, amount only to attempted enticement because no one was actually enticed away. More particularly, he urges:

> absent a specific victim, either a minor under the age of sixteen or a person who defendant reasonably believed to be a minor under the age of sixteen, who, in fact, was enticed away by defendant's conduct, there can not be a completed offense. If no one was enticed away . . . the offense was not completed, only attempted.

We lay the text of those two provisions out in full. Iowa Code section 710.10(2) provides that:

> A person commits a class "D" felony when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person entices away a minor under the age of sixteen, or entices away a person reasonably believed to be under the age of sixteen.

Iowa Code section 710.10(3) provides that:

> A person commits an aggravated misdemeanor when, without authority and with the intent to commit an illegal act upon a minor under the age of sixteen, the person *attempts to* entice away a minor under the age of sixteen, or attempts to entice away a person reasonably believed to be under the age of sixteen.

(Emphasis added)

It is significant that the only difference between the two statutes is two words. Based on the language used in the statutes, the apparent intent of the legislature, and case law from our supreme court defining the parameters of the term entice, we agree, and conclude substantial evidence does not support Hansen's conviction for enticing away a minor. In *State v. Osmundson,* 546 N.W.2d 907 (Iowa 1996), our supreme court had occasion to define the term entice as used in the crime of attempted enticement, section 710.10. There, it defined entice in an expansive fashion:

> Entice is defined as to draw on by arousing hope or desire or to draw into evil ways. Synonymous words include allure, attract, and tempt. Black's Law Dictionary defines entice as [t]o wrongfully solicit, persuade, procure, allure, attract, draw by blandishment, coax or seduce. To lure, induce, tempt, incite, or persuade a

> person to do a thing. Enticement of a child is inviting, persuading or attempting to persuade a child to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the person of said child.

Osmundson, 546 N.W.2d at 909 (citations omitted). Were we to also apply this broad definition of the term entice as employed in the substantive crime of enticement as urged by the State, as well as the attempt crime as laid out in *Osmundson*, the distinctions between the two crimes would disappear. We believe there must be some logical reason for the legislature to have written language covering both attempted enticement and actual enticement.

We first look to general principles distinguishing attempt and the completed crime. While Iowa does not have a general attempt statute, our courts have provided the following guidance in the context of a burglary prosecution:

> "The common law principles of attempt require the State to prove (1) intent to commit the crime and (2) slight acts in furtherance of the crime that render voluntary termination improbable." *Fryer v. State,* 325 N.W.2d 400, 406 (Iowa 1982). It was not necessary, of course, for defendant to actually enter the pharmacy in order to commit *attempted* burglary. Attempted burglary is distinguished from the completed crime only by defendant's failure to effect an entry. *Compare* Iowa Code § 713.1 ("Any person . . . *who* . . . *enters* an occupied structure or area . . . commits burglary.") *with* Iowa Code § 713.2 ("Any person . . . *who* . . . *attempts to enter* . . . commits attempted burglary."). (Emphasis added.)

State v. Erving, 346 N.W.2d 833, 836 (Iowa 1984.) Furthermore, in *State v. Roby,* 194 Iowa 1032, 1043, 188 N.W. 709, 714 (1922), the supreme court defined the act needed for attempt as one that would "reach far enough towards the accomplishment, toward the desired result, to amount to the commencement of the consummation, not merely preparatory."

General principles of statutory construction also support that there must be a logical difference between the crime of attempted enticement and a crime of "completed" enticement. Pursuant to our directive to interpret the legislature's actions so as to give effect to all parts of a statute, Iowa Code § 4.4(2), we must assume the legislature has chosen to differentiate between enticement and attempted enticement. *State v. Reed***,** 596 N.W.2d 514, 515 (Iowa 1999). ("In interpreting statutes, we will assume that the legislature intends to accomplish some purpose and that the statute was not intended to be a futile exercise.") If we were to define *enticement* as urged by the state, there would be no purpose for the provision for *attempted enticement*. Here there were activities that were more than merely preparatory to that of enticing away an individual believed by Hansen to be a minor, but did not accomplish the desired result.

We also conclude the broader phrase "entice away" as used in the completed crime statute must be interpreted differently than in the attempt statute. In *Osmundson*, the court held that "away" did not alter or add to the term entice within the context of that case. *Osmundson*, 546 N.W.2d at 910. ("Osmundson also argues that the statutory language is vague because it is unclear from what or whom the victim is to be enticed away.") In *Osmundson* this definition makes sense when read in the context of an attempt statute. Because no person was actually lured away from anywhere and persuaded to go somewhere else, there could only have been an attempt. *See e.g. State v. Quinn*, 691 N.W.2d 403, 408 (Iowa 2005) (holding evidence was sufficient for a finding of attempt to entice where defendant blocked child's path with his vehicle, said "come over here," and gestured with his finger for her to come to him.)

When interpreting the meaning of the statute, we give effect to all the words in the statute unless no other construction is reasonably possible. *Iowa Auto Dealers Ass'n v. Iowa Dep't of Revenue & Fin.,* 301 N.W.2d 760, 765 (Iowa 1981). Therefore, the word away is presumed to have been given some meaning. As noted, while adding the word away to entice, as a matter of logic, may not add to or alter the meaning of the word entice in the attempt statute. When applied to the facts of this case in a prosecution for the completed offense of enticement, there must have been some reason for the use of that extra word modifying the term entice.

Although our supreme court has stated the addition of the word away to entice does not add to or alter the meaning of the word entice, it is relevant whether the supposed fifteen-year-old in this case actually acceded to the inducements and went to the Wal-Mart for the planned meeting. Here the officer who posed as the young girl was not part of the team that met Hansen at the Wal-Mart. Nor can it be said that the arresting officers, who were not part of the online conversation, were induced by Hansen's entreaties to come to the Wal-Mart to commit an illegal act. Hansen's communications clearly were directed at soliciting, tempting, luring, or seducing the individual he believed to be a fifteen-year-old girl. Thus we must agree with Hansen's argument that "it is highly doubtful any of the Cedar Falls police officers . . . were 'enticed away' from their offices to Wal-Mart". Further, as previously noted, enticement has been defined as "inviting, persuading or attempting to persuade a child to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the person of said child." *Osmundson*, *546 N.W.2d at 909. In*

Osmundson, the defendant attempted to persuade the boys to leave the area where they were talking and go to his apartment and even offered money and refreshments, but was unsuccessful. The court found this adequate to constitute an attempt to entice. Within the context of an attempted enticement, the construction that away did not alter or add to the term entice is appropriate.

Where the charge, however, is enticement as opposed to attempted enticement, the definition in *Osmundson* makes it clear that there must be some response by the person being enticed. The completed act for enticement would be the actual persuasion of a minor, or one reasonably believed to be a minor, to enter any vehicle, building, room or secluded place with intent to commit an unlawful sexual act upon or with the person of said child. Although Hansen certainly attempted to meet with the purported fifteen-year-old for that purpose, there were no invitations or offers, nor was there any discussion or enticement "to enter any vehicle, building, room or secluded place". Further, there was no response by the victim that lured her to a vehicle, building, room or secluded place. Without a response where the victim was actually enticed to do something, Hansen's actions could only have amounted to attempted enticement.

Hansen has requested a remand for the entry of a judgment of not guilty or, in the alternative, an instruction for the district court to enter a judgment of guilty for the lesser included offense of attempt to entice away a minor. We agree with Hansen that the facts of this case do not support a finding of conviction for enticing away a minor. We agree, however, that the facts do support a finding to support the conviction for attempting to entice away a minor.

We therefore vacate the conviction, and remand with instructions to enter a finding of guilt for attempted enticement.

REVERSED AND REMANDED WITH DIRECTIONS.