IN THE COURT OF APPEALS OF IOWA

No. 8-417 / 07-0988
Filed August 13, 2008

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CLIFFORD LAWRENCE HUGHES,
Defendant-Appellant.

Appeal from the Iowa District Court for Winneshiek County, John Bauercamper, Judge.

Defendant appeals his conviction for attempting to entice away a minor. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and E. Frank Rivera, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sheryl A. Soich, Assistant Attorney General, and Andrew Van Der Maaten, County Attorney, for appellee.

Considered by Vogel, P.J., and Mahan, J., and Schechtman, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2007).

SCHECHTMAN, S.J.

I. Background Facts & Proceedings

Clifford Hughes, under the on-line name of "lostit18," initiated a conversation with "Mariah" in an on-line chat room on July 19, 2006. Hughes was fifty-five years old, residing in Postville, Iowa. "Mariah" stated she was a twelve-year-old female from Iowa. She was, in fact, an undercover police officer.

Hughes quickly turned the conversation to one with a sexual content. He sent "Mariah" a picture of his penis and asked several times, in graphic terms, if she would like to have sex with him. He inquired if she had ever run away from her home. Hughes offered to meet "Mariah" if she met him half-way. He asked if she had some form of transportation, and if she knew any friends that drove. Hughes told "Mariah" she could stay with him as long as she wanted.

Hughes and "Mariah" continued to have nine conversations between July 19 and August 15, 2006. Hughes told "Mariah" several times he would like to meet her in real life. He said he had purchased a diamond ring for her, which he threatened to take back when her answers appeared noncommittal. "Mariah" stated she could not wait to see the diamond. Hughes responded that she could have the ring when they met. Hughes later admitted to police officers he had conversations about sex on the internet with a twelve-year-old girl. He remarked, "I asked her if she wanted to meet, yeah." Police officers discovered the diamond ring in Hughes's home.

Hughes was charged with attempting to elicit away a minor, in violation of Iowa Code section 710.10(3) (2005). It was a bench trial on stipulated facts.[1] The district court found Hughes attempted to allure, attract, and tempt "Mariah," who he reasonably believed was a twelve-year-old girl. The court concluded Hughes was guilty of attempting to entice away a minor. Hughes was sentenced to a term of imprisonment not to exceed two years. He now appeals his conviction, claiming it was not supported by sufficient evidence.

II. Standard of Review

We review challenges to the sufficiency of the evidence for the correction of errors at law. *State v. Schmidt*, 480 N.W.2d 886, 887 (Iowa 1992). A verdict of guilty is binding on appeal, unless there is no substantial evidence in the record to support it, or the verdict is clearly against the weight of the evidence. *State v. Shortridge*, 589 N.W.2d 76, 80 (Iowa Ct. App. 1998). Substantial evidence means evidence that could convince a rational fact finder that the defendant is guilty beyond a reasonable doubt. *Id.*

III. Merits

Hughes claims his on-line conversations with "Mariah" were for the purpose of his own sexual titillation, and not for the purpose of enticing her away. He states he never entered into an actual plan with "Mariah" to meet in person. He asserts his acts were merely preparatory, never consummated; that his "chats" did not reach far enough towards the desired accomplishment. Hughes

[1] The case was submitted based on the minutes of testimony, transcript of the on-line chats, a deposition of the undercover police officer posing as "Mariah," a photograph of the diamond ring, and photographs Hughes sent "Mariah" over the internet.

contends he should not be found guilty based merely on internet conversations, without evidence of some direct act(s) towards execution of his purported design.

Iowa Code section 710.10(3) provides:

> 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.

The State was required to prove the defendant: (1) acted without authority; (2) acted with the intent to commit an illegal act upon a minor under the age of sixteen; and (3) attempted to entice away a person reasonably believed to be under the age of sixteen. *See State v. Quinn*, 691 N.W.2d 403, 408 (Iowa 2005). Hughes does not dispute the first two elements. He does contest the third element, arguing that there was insufficient evidence to show an attempt to entice away "Mariah."

The term "entice" has been defined as "to draw on by arousing hope or desire" or "to draw into evil ways." *State v. Osmundson*, 546 N.W.2d 907, 909 (Iowa 1996) (citation omitted). Terms that are considered synonymous with "entice" are allure, attract, and tempt. *Id.* "[A]dding the word 'away' to 'entice' does not add to or alter the meaning of the word 'entice.'" *Id.* at 910. "[T]he phrase 'entices away' requires the fact finder to look not only to the actions and conduct of the defendant but also to the impact of those actions upon the victim." *State v. Hansen*, 750 N.W.2d 111, 114 (Iowa 2008).

A person is guilty of attempting to entice away a minor if the person has the requisite intent to lure or tempt away a minor, but is not successful in actually

tempting the minor into coming away. *Id.* Thus, a defendant who said "come over here" to a little girl and gestured with his finger for her to come to his car, but the girl ran from him, was guilty of attempting to entice away a minor. *See Quinn*, 691 N.W.2d at 408. Also, a defendant who arranged to meet a supposed fifteen year old girl (actually an undercover police officer) at a store was guilty of attempting to entice away a minor. *Hansen*, 750 N.W.2d at 114.

Under common law, "attempt" required a showing of an intent to commit a crime, and "slight acts in furtherance of the crime that render voluntary termination improbable." *State v. Erving*, 346 N.W.2d 833, 836 (Iowa 1984). Hughes made several statements showing his intent to have "Mariah" meet with him. Hughes devised plans to do so. Hughes suggested a site to rendezvous, which he described as half-way, the intersection of Interstate 35 and Highway 3. He asked if she had any friends that drove a vehicle. Hughes also told "Mariah" he would give her a diamond ring when they met. Beyond making plans, Hughes also committed an aggressive act, in furtherance of the crime, by the purchase of the diamond.

We conclude there is sufficient evidence in the record to prove Hughes attempted to entice a person he reasonably believed to be under the age of sixteen. We affirm.

AFFIRMED.