NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Argued December 12, 2023
Decided March 5, 2024

Before

MICHAEL Y. SCUDDER, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1164

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

JASON SCOTT GONZALEZ,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Illinois.

No. 4:21-CR-40036-SMY-1

Staci M. Yandle,
Judge.

O R D E R

Jason Gonzalez used a dating application to arrange a sexual encounter with a 15-year-old male who, unbeknownst to Gonzalez, was an undercover FBI agent. After arriving at the agreed-upon meeting place, Gonzalez was stopped by law enforcement and later charged with one count of attempting to entice a minor into sexual activity in violation of 18 U.S.C. § 2422(b). Gonzalez took the case to trial, and the jury returned a guilty verdict. On appeal Gonzalez challenges only the sufficiency of the government's evidence, contending that no reasonable jury could have found that he took the substantial step necessary for an attempt conviction. We disagree and affirm.

I

In 2021 the FBI conducted an undercover operation to apprehend persons soliciting sex from minors on a dating app called "Grindr." The case agent created a fictitious profile on Grindr of an 18-year-old male named "Jake."

Gonzalez first messaged Jake on March 5, 2021. Jake told Gonzalez that he lived with his mother in Marion, Illinois, and divulged that, contrary to his Grindr profile, he was under 18. In short order the messaging turned illicit, with Gonzalez revealing his sexual interests and proposing to meet with Jake. The next day, Jake clarified that he was only 15 years old. Upon learning that information, Gonzalez requested an image of Jake's bare buttocks and described in detail the sex acts he wished to perform on Jake.

By March 12, Gonzalez and Jake agreed to meet in a Dollar General parking lot in Metropolis, Illinois. When Gonzalez arrived, FBI agents approached and arrested him, bringing the sting operation to an end. Gonzalez reacted by placing his head on his steering wheel and weeping. He later agreed to an interview and admitted that he drove to the Dollar General with the intention of having sex with Jake, who he believed to be 15 years old. But Gonzalez also insisted that he changed his mind en route and that by the time he arrived at the store, his intent was only to meet Jake socially, not to have sex.

A federal grand jury charged Gonzalez with attempting to entice a minor in violation of 18 U.S.C. § 2422(b). At trial Gonzalez chose to testify in his own defense, telling the jury (as he did the FBI in his post-arrest interview) that although he had left for the Dollar General intending to have sex with Jake, he changed his mind on the way. On cross examination, Gonzalez admitted that he never communicated this change of heart to Jake (by phone or instant message, for example).

After the district court denied Gonzalez's motion for judgment of acquittal, the jury returned a guilty verdict, with the district court later imposing a 10-year sentence.

II

On appeal Gonzalez renews his sufficiency-of-the-evidence challenge. He contends that, because he changed his mind on the way to Dollar General, he abandoned plans to have sex with Jake and therefore did not take the substantial step necessary to sustain an attempt conviction under § 2422(b).

A

We will reverse a guilty verdict only if, when viewed in the light most favorable to the prosecution, "the record is devoid of evidence from which a reasonable jury could find guilt beyond a reasonable doubt." *United States v. Leal*, 72 F.4th 262, 267 (7th Cir. 2023). This burden, we have emphasized, is "nearly insurmountable." *Id*. Where the record supports competing interpretations of the events that transpired, the choice of which version to believe is up to the jury, not the court. See *United States v. Farmer*, 38 F.4th 591, 602 (7th Cir. 2022) ("We can neither reweigh the evidence nor reassess witness credibility.").

Section 2422(b) criminalizes the attempt to persuade, induce, entice, or coerce a person under the age of 18 to engage in any sexual activity for which a person can be charged with a criminal offense. 18 U.S.C. § 2422(b). The statute aims to criminalize the attempt "to obtain the minor's assent to sexual activity." *United States v. Baird*, 70 F.4th 390, 393 (7th Cir. 2023) (quotation omitted). To sustain an attempt conviction, the government must establish that Gonzalez "took a substantial step towards completion of the offense." *Id.* at 392 (citation omitted). "A substantial step occurs when a person's actions make it reasonably clear that had he not been interrupted or made a mistake, he would have completed the crime." *United States v. Chambers*, 642 F.3d 588, 592 (7th Cir. 2011).

B

We have no trouble seeing the evidence as sufficient to support the jury's verdict. The beginning point is recognizing what Gonzalez concedes—that he traveled to the Dollar General with the intention of having sex with Jake, who he believed to be 15 years old. From there, however, Gonzalez insists that he changed his mind before arriving at the meeting location, intending by the time of his arrival not to have sex with Jake, but only to meet him as part of a lawful social encounter. Gonzalez contends that his testimony to that effect at trial foreclosed the jury from finding that he took a substantial step towards enticing Jake under § 2422(b).

Not so. What Gonzalez's position misses is that the jury was free to reach a different conclusion—to discount Gonzalez's change-of-heart testimony as not credible and to conclude that Gonzalez always intended to meet Jake for sex, particularly after eight days of communications saying as much. It is the province of the jury to make such credibility determinations. See *Farmer*, 38 F.4th at 602.

In any case, even if the jury accepted Gonzalez's account, § 2422(b) criminalizes an attempt to achieve a minor's assent to sex, regardless of the defendant's intent to follow through with the sexual activity that the defendant enticed the minor to pursue. See *United States v. York*, 48 F.4th 494, 500–01 (7th Cir. 2022) (concluding that the government presented ample evidence to find the defendant guilty under § 2422(b) where the defendant discussed his sexual preferences with the minor, requested sexually suggestive photos of the minor, and arranged to meet the minor). So even assuming Gonzalez did have the change of heart he claims, that would not preclude a finding of attempted enticement on the record evidence submitted to the jury.

Gonzalez offers one final argument, but it too is unavailing. He maintains that his conversations with Jake on topics other than sexual acts (such as work, spring break, and horseback riding) show that he did not intend to engage in illicit sex with Jake or to entice Jake to do so. But a reasonable jury could find that the intermixing of these off-topic conversations with sexually explicit ones shows that Gonzalez was "grooming" Jake to entice him for illicit sex. See *United States v. Berg*, 640 F.3d 239, 252 (7th Cir. 2011). Indeed, § 2422(b) targets the sexual exploitation of minors as well as the "sexual grooming" of them. *Id.* Stated most simply, the jury had ample reason to conclude that, by blending topics of a sexual and non-sexual nature, Gonzalez violated § 2422(b) by attempting to groom Jake into illegal sexual activity.

For these reasons, we AFFIRM.