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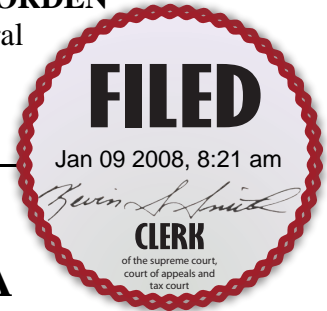
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**IN THE
COURT OF APPEALS OF INDIANA**

KEVIN KUYPERS,)

Appellant-Defendant,)

vs.)

STATE OF INDIANA,)

Appellee-Plaintiff.)

No. 49A02-0706-CR-522

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable W.T. Robinette, Master Commissioner
Cause No. 49G03-0608-PC-149245

January 9, 2008

OPINION - FOR PUBLICATION

BAKER, Chief Judge

Appellant-defendant Kevin Kuypers appeals his conviction for Child Solicitation,¹ a class C felony. Kuypers argues that evidence that he engaged in an online chat with a believed-to-be fifteen-year-old girl, in which he neither specifically asked her to do anything nor made specific arrangements to meet in person, is insufficient to support the conviction. Finding the evidence sufficient, we affirm.

FACTS

The facts herein are undisputed. In early July 2006, employees of the Marion County Prosecutor's Office and the Indianapolis Metropolitan Police Department embarked on an Internet investigation involving the solicitation of children for sex. As part of the investigation, the investigators created a profile on the Yahoo member directory of a fifteen-year-old girl named Samantha.

On July 11, 2006, "Samantha" was contacted by "mugs_32778." Tr. p. 69-70. An instant message chat ensued between Samantha and mugs_32778:

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mugs_32778:          so tell me about yourself
samantha_dyer61:    15 5'6 100 like to have a good time
mugs_32778:          what kind of good time
samantha_dyer61:    name it
mugs_32778:          bent over your table with my d*ck in your
                    p*ssy, while I smack your [a]ss
                    ***
mugs_32778:          . . . your titts [sic] how big are they
samantha_dyer61:    32b
mugs_32778:          nice
samantha_dyer61:    thanks
mugs_32778:          are they perky
samantha_dyer61:    what do u think
mugs_32778:          lol
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¹ Ind. Code § 35-42-4-6.

mugs_32778: id [sic] hope so

mugs_ 32778: you like doggie
samantha_dyer61: yea i like dogs lol

mugs_ 32778: oh boy what am i going to do with you
samantha_dyer61: u tell me

mugs_ 32778: have you ever meet [sic] off line

samantha_dyer61: yes
mugs_ 32778: so when can I take you out.
samantha_dyer61: out where?
mugs_ 32778: anywhere you want
samantha_dyer61: really what would we do?
mugs_ 32778: anything you would like
samantha_dyer61: kool

mugs_ 32778: ok so what do you have in mind
samantha_dyer61: lots how bout u

mugs_ 32778: so when works for you
samantha_dyer61: what do u have in mind.
mugs_ 32778: anything
samantha_dyer61: kool
mugs_ 32778: i just never been in indy all that much and
dont no [sic] where anything is.

mugs_ 32778: so you have a number
samantha_dyer61: well yes but my dads home

mugs_ 32778: he will get mad if I call
samantha_dyer61: i'm grounded til Monday
mugs_ 32778: well it looks i wont call till Monday
samantha_dyer61: k kool

State's Ex. 4. At some point during the chat, Kuypers sent Samantha four pictures of himself. The chat ended with no specific plans to meet being made and mugs_32778 never attempted to call "Samantha."

Police eventually learned that mugs_32778 was Kuypers. On August 2, 2006, they

went to Kuypers's residence, questioned him, and ultimately arrested him. On August 11, 2006, the State charged Kuypers with class C felony child solicitation, and a jury found him guilty as charged on March 1, 2007. The trial court sentenced him to four years imprisonment, all suspended, and three years of probation. Kuypers now appeals.

DISCUSSION AND DECISION

Kuypers argues that the evidence is insufficient to support his conviction. In reviewing Kuypers's claim, we will neither reweigh the evidence nor judge the credibility of witnesses. McHenry v. State, 820 N.E.2d 124, 126 (Ind. 2005). The evidence is sufficient if an inference may reasonably be drawn from it to support the judgment. Drane v. State, 867 N.E.2d 144, 146 (Ind. 2007).

The child solicitation statute provides as follows:

- (a) As used in this section, "solicit" means to command, authorize, urge, incite, request, or advise an individual:

- (4) by using a computer network (as defined in IC 35-43-2-3(a));

to perform an act described in subsection (b) or (c).

- (c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits . . . an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in:
 - (1) sexual intercourse;
 - (2) deviate sexual conduct; or

- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in IC 35-43-2-3(a))

- (d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

I.C. § 35-42-4-6. “Authorize” means, in relevant part, “[e]ndow (a person, body, etc.) with authority” The New Shorter Oxford English Dictionary 151 (Thumb Index ed. 1993).

“Request” means “[a]sk to be favoured with or given (a thing), ask for; express a wish or desire *that, to do*; ask to be allowed *to do*; ask (a person) *to do* something.” Id. at 2556 (emphases in original). “Advise” means, in relevant part, “[r]ecommend.” Id. at 32.

Here, the facts are undisputed. Kuypers engaged in an online conversation with a person he believed to be a fifteen-year-old girl. In the course of that conversation, he elicited information regarding her age, height weight, and breast size. He asked what she likes to do for a “good time,” she replied, “name it,” and he described his idea of a “good time”: “bent over your table with my d*ck in your p*ssy, while I smack your [a]ss” State’s Ex. 4. He asked her if she likes “doggie,” clearly referring to a specific position for sexual intercourse. Id. Kuypers then asked her if she had “meet [sic] off line,” and after she responded “yes,” he asked, “so when can i take you out[?]” Id. He explained, “i just never been in indy all that much and dont no [sic] where anything is” Id. Kuypers also sent Samantha four pictures of himself.

We believe that an inference may reasonably drawn from this evidence that Kuypers

was, at the least, expressing a wish or desire that Samantha meet him in person and engage in, among other things, sexual intercourse. He asked Samantha to meet him offline; that she responded by explaining that she was grounded does not change the fact that he made the request, that he recommended a course of action, or that he implicitly gave her permission—authority—to meet him in person and engage in sexual activity.

Kuypers argues that because their conversation did not include details, he is impermissibly being punished for his thoughts. He is wrong. Kuypers did more than fantasize about having sex with a fifteen-year-old girl; he sought one out on the Internet, described his fantasy in detail, and suggested that they meet in person. Thus, he acted.

Our General Assembly has seen fit to criminalize those acts by enacting a law banning child solicitation via the Internet. There is no requirement that a solicitor actually complete the act of meeting with his or her victim to commit the crime of child solicitation. LaRose v. State, 820 N.E.2d 727, 730-32 (Ind. Ct. App. 2005), trans. denied (finding the statute to be constitutional and explaining that “the crime of child solicitation is completed at the time of the utterance[; t]he urging to perform the act—rather than the performance of the urged act—constitutes child solicitation”) (emphasis in original) (citation omitted). Furthermore, the statute does not require that the solicitor inject details into the conversation such as the time and place of the act. Indeed, the statute “not only does not express an immediacy requirement for the act urged by the solicitor but specifically states there is no immediacy requirement.” Id. (citing I.C. § 35-42-4-6(c)) (emphasis in original). Neither a meeting nor an immediate request is necessary to complete the crime of child solicitation because it is the

mere “[e]xposure of children to such solicitations . . . that the statute seeks to avoid.” Id. at 733 n.6. Therefore, to commit child solicitation, a person must merely “command, authorize, urge, incite, request, or advise” a child to commit the act.

Here, it may reasonably be inferred from the evidence that Kuypers requested and advised Samantha to meet with him and engage in, among other things, sexual intercourse. The absence of details does not make him any less guilty. We find, therefore, that the State presented sufficient evidence to support Kuypers’s conviction for child solicitation.

The judgment of the trial court is affirmed.

DARDEN, J., and BRADFORD, J., concur.