STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 26, 2010
V	No. 293253 Kent Circuit Court
ANDREW PAUL SCHUTZE, Defendant-Appellant.	LC No. 08-012134-FH

Before: SAWYER, P.J., and FITZGERALD and SAAD, JJ.

PER CURIAM.

Defendant appeals his jury trial convictions of child sexually abusive activity, MCL 750.145c(2), and communicating with another on the Internet to commit a felony, MCL 750.145d(2)(f) (child sexually abusive activity). For the reasons set forth below, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The above charges resulted in part from defendant's online computer activity between September 7, 2008, and October 17, 2008. Defendant used the Internet to send emails and text messages to an individual posing as a 14-year-old girl named "Raegan." Copies of some of defendant's communications with "Raegan" were submitted at trial and showed that defendant engaged in progressively more romantic and sexually explicit conversations with the "girl." Apparently, defendant could view pictures of "Raegan" on a MySpace page, and he complimented her and complied with her request to see pictures of himself. Defendant also used his webcam to show himself masturbating, and the individual using the "Raegan" persona captured screenshots of this on her computer. Eventually, defendant made plans to meet with "Raegan" at her house in Grand Rapids Township. On October 17, 2008, defendant went to the location to meet "Raegan," he was arrested and, as noted, was later convicted by a Kent County jury.

Defendant argues that the trial court erred when it failed to properly instruct the jury on venue. He argues that, because he communicated with the girl from his home in Berrien County and the individual portraying herself as a 14-year-old girl was in Washington during the conversations, venue for the charges against him were not proper in Kent County. Defendant maintains that, as an element of the offenses, the jury should have been instructed that the communications had to have either originated or terminated in Kent County. However, after the trial court instructed the jury and sent the jury members to deliberate, the trial judge asked

defense counsel, "Ms. Furtaw, any comments on the charge?" Defense counsel answered, "No, your Honor." A party is deemed to have waived a challenge to the jury instructions when a party has expressed satisfaction with, or denied having any objection to, the instructions as given. *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002); *People v Tate*, 244 Mich App 553, 558-559; 624 NW2d 524 (2001). A waiver extinguishes any instructional error and appellate review is precluded. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000); *People v Dobek*, 274 Mich App 58, 65; 732 NW2d 546 (2007). Thus, defense counsel's express approval of the instructions has waived this issue for appeal.

Defendant argues that the prosecution failed to provide evidence to support an essential element of the charged offenses.[1] He concedes that a defendant may be found guilty of the charged offenses even if he was arranging for a sexual encounter with a perceived child instead of an actual child, see *People v Thousand*, 241 Mich App 102, 114-117; 614 NW2d 674 (2000), rev'd in part on other grounds 465 Mich 149 (2001). However, he maintains that the prosecutor failed to show intent—that he believed that "Raegan" was under 18 years of age—because he encountered her in a chat room only open to people over the age of 18.

We hold that defendant's arguments lack merit. Minimal circumstantial evidence is sufficient to establish the element of intent. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). Here, the person who established the "Raegan" persona testified that she told defendant that she was 14 years old, and that all of her online profile information stated that she was 14 years old. She also testified during cross-examination that she did not have to falsely claim that she was 18 years old to get into the chat room because she set it up so that her "mother" had the account and gave "Raegan" access to it. Accordingly, the jury heard evidence that defendant believed he was communicating with a 14-year-old girl. It also establishes that a 14-year-old girl could conceivably enter the chat room, even if defendant is correct that the chat room was normally only open to persons over 18 years of age. In addition, the prosecution presented testimony concerning defendant's statements to "Raegan" that he could get into trouble by kissing her and that it would be rape if someone defendant's age "messe[d] around" with someone of "Raegan's" age. These statements by themselves constitute strong circumstantial evidence that defendant believed that "Raegan" was actually 14 years old. Moreover, Attorney General Special Agent Michael Ondejko interviewed defendant after his

---

[1] In a sufficiency of the evidence claim, this Court views the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). Satisfactory proof of the elements of the crime can be shown by circumstantial evidence and the reasonable inferences arising therefrom. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). It is for the trier of fact to determine what inferences fairly can be drawn from the evidence and the weight to be accorded to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

arrest and testified that defendant admitted that he knew that "Raegan" was underage. In light of the evidence presented, a rational jury could conclude that defendant intended to communicate with, and engage in sexual relations with, a 14-year-old girl. The prosecution thus provided sufficient evidence to support defendant's convictions.

Affirmed.

/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald
/s/ Henry William Saad