STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1120

State of Minnesota,
Respondent,

vs.

Bradley Charles Slagle,
Appellant.

Filed October 30, 2017
Affirmed
Halbrooks, Judge

Ramsey County District Court
File No. 62-CR-14-9762

Lori Swanson, Attorney General, St. Paul, Minnesota; and

John J. Choi, Ramsey County Attorney, Thomas R. Ragatz, Assistant County Attorney, St. Paul, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Smith, Tracy M., Presiding Judge; Peterson, Judge; and Halbrooks, Judge.

U N P U B L I S H E D O P I N I O N

HALBROOKS, Judge

In this appeal from final judgment, appellant challenges the district court's denial of his motion to dismiss the charge of violation of Minn. Stat. § 609.352, subd. 2a(2)

(2012), electronic communication with a child describing sexual conduct, based on the defense of entrapment. Because we conclude that the district court properly concluded that appellant was not entrapped, we affirm.

FACTS

Appellant Bradley Slagle posted an advertisement on Craigslist entitled "Daughter/Mother Fantasy," indicating that he was looking to make his fantasy of having sex with a mother and daughter at the same time a reality. Officer Ryan Peterson, who at the time was working to target the solicitation of children on the internet, responded to Slagle's advertisement, representing himself as a fictitious 35-year-old mother named Michelle with a fictitious 13-year-old daughter named Amanda.

The district court made the following factual findings with respect to the initial exchange of emails between Slagle and Michelle:

> Officer (1031 hours): *Hey...saw your ad...im curious...my daughters 13. Never done this before. Im 35 and like to have fun.* [Slagle] did not immediately respond and 24 minutes later the Officer sent another email with a photo of "Amanda".
>
> [Slagle] (1231 hours): *Daughter is very cute, how bout a photo of yourself? She is only 13?? You are on with her getting f--cked? I would want to make sure as she isn't 18...* This email contained two nude photos of a penis. Several emails were immediately exchanged and [Slagle] expressed concerns about not wanting to get in trouble.
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> Officer (1257 hours): *I've talked with my daughter b4 about this...I'd like her to chat with you so she feels comfortable.* The Officer then provides [Slagle] with Amanda's email address.
>
> [Slagle] (1505 hours): (after a series of questions by [Slagle]) *I am alitte concerned about her age to be honest. I want to make sure you aren't in law enforcement and that she is*

> *completely ok as she is under 18 and not "legal" if you know what I mean.* The Officer goes on to explain to [Slagle] that she has discussed this with her daughter and believes it would be a good experience for her. The Officer then again sends [Slagle] Amanda's email address. [Slagle] did not contact Amanda on May 28, 2014.

Slagle subsequently began exchanging emails with Amanda on May 29 after Michelle gave him Amanda's email address and encouraged him to contact her. Initially the messages between Slagle and Amanda were nonsexual in nature. But Slagle soon began inquiring about her sexual experience, describing the sexual acts he would like to perform with her and expressing arousal at the thought of meeting Amanda and her mother. Slagle also repeatedly asked Amanda for pictures of herself. After Amanda told him that she did not know what he looked like, he sent her two nude photographs of himself.

Slagle was arrested and charged with electronic solicitation of a child under Minn. Stat. § 609.352, subd. 2a(2). Slagle asserted an entrapment defense. He agreed to waive his right to a jury trial on the issue and submit the defense of entrapment to the district court under Minn. R. Crim. P. 9.02, subd. 1(6). Following an omnibus hearing, the district court rejected Slagle's entrapment defense. Slagle proceeded under Minn. R. Crim. P. 26.01, subd. 4, seeking appellate review of the entrapment issue.[1] The district court found Slagle guilty of electronic solicitation of a child. This appeal on the entrapment issue follows.

[1] Slagle refers to this as a *Lothenbach* proceeding. But Minn. R. Crim. P. 26.01, subd. 4, replaced *Lothenbach* in 2007 as the way to preserve a dispositive pretrial issue for appellate review in criminal cases. *See State v. Myhre*, 875 N.W.2d 799, 802 (Minn. 2016).

D E C I S I O N

Standard of Review

Minn. R. Crim. P. 26.01, subd. 4, states in relevant part:

> (b) The defendant must maintain [a] plea of not guilty.
>
> (c) The defendant and the prosecutor must acknowledge that the pretrial issue is dispositive . . . .
>
> . . . .
>
> (e) The defendant must stipulate to the prosecution's evidence in a trial to the court, and acknowledge that the court will consider the prosecution's evidence, and that the court may enter a finding of guilt based on that evidence.
>
> (f) The defendant must also acknowledge that appellate review will be of the pretrial issue, but not of the defendant's guilt, or of other issues that could arise at a contested trial.

This court reviews a district court's findings of fact for clear error. *State v. Wiernasz*, 584 N.W.2d 1, 3 (Minn. 1998) (discussing mixed questions of law and fact). Whether those facts constitute entrapment is a legal question that we review de novo. *See id*. Because Slagle does not challenge any of the district court's findings of fact, we review de novo the legal question of whether those facts constitute entrapment.

Entrapment

The supreme court articulated Minnesota's entrapment doctrine in *State v. Grilli*, 304 Minn. 80, 88-96, 230 N.W.2d 445, 451-56 (1975). The *Grilli* analysis utilizes a two-pronged test. 304 Minn. at 96, 230 N.W.2d at 456. For the first prong, the burden is on the defendant to "raise by a fair preponderance of the evidence the issue of entrapment for consideration by the court or jury, as he elects." *Id*. To succeed under this prong, the

defendant must show "that the state did something more than merely solicit the commission of a crime." *State v. Olkon*, 299 N.W.2d 89, 107 (Minn. 1980). This prong can be satisfied by showing "persuasion, badgering, or pressure by the state." *Id*.

If the defendant is successful on the first prong, the burden shifts to "the state to prove beyond a reasonable doubt that the accused was predisposed to commit the crime charged." *Grilli*, 304 Minn. at 96, 230 N.W.2d at 456. This predisposition can be shown by evidence of: "(a) Defendant's active solicitation to commit the crime, (b) prior criminal convictions, or (c) prior criminal activity not resulting in conviction, or (d) defendant's criminal reputation, or by any other adequate means." *Id*. at 89, 230 N.W.2d at 452. "Any other adequate means," *id.*, can be proved "by evidence that the accused readily responded to the solicitation of the commission of a crime by the state." *Olkon*, 299 N.W.2d at 108. But "the state must prove the defendant was predisposed '*prior* to first being approached by government agents.'" *State v. Johnson*, 511 N.W.2d 753, 755 (Minn. App 1994) (quoting *Jacobson v. United States*, 503 U.S. 540, 549, 112 S. Ct. 1535, 1540 (1992)), *review denied* (Minn. Apr. 19, 1994).

Officer Peterson undeniably gave Slagle the opportunity to commit this crime. But as the supreme court made clear in *Olkon*, the first prong of *Grilli* does not ask whether the state merely solicited the crime; it asks whether the state did something more through persuasion, badgering, or pressure. *Olkon*, 299 N.W.2d at 107.

Slagle asserts that the district court, in its order denying his motion to dismiss, stated that law enforcement did not engage in "threats, intimidation or excessive pressure." Slagle characterizes this language as constituting a higher burden than a showing of persuasion or

pressure and therefore argues that the district court applied an incorrect standard. But in the next sentence of its order, the district court states that law enforcement "did nothing to pressure or persuade him to engage in sexual-conduct communication." We conclude that the district court applied the correct standard in its analysis.

Slagle also argues that his situation is comparable to *Johnson*, in which this court concluded that the state had entrapped the defendant. 511 N.W.2d at 756. We disagree. In *Johnson*, the defendant was approached in a sting operation and asked if he wanted to buy marijuana. *Id.* at 754. The defendant initially refused before eventually agreeing to "act[] as a conduit" and buy marijuana for someone else. *Id.* We determined that "not only did the government solicit the encounter by initiating the 'reverse sting,' it also continued to press its offer even after Johnson initially refused to buy any marijuana." *Id.* at 755. Slagle claims that his situation is comparable because Slagle contends that Officer Peterson brought up the idea of sexual communications with Amanda and that he "rejected the crime initially but [was] eventually overcome by the officer's persuasion."

While Officer Peterson initiated the sting, as in *Johnson*, he did not continue to press the offer after a refusal. Slagle expressed some concerns about Amanda's age, but at no point did he say "no" only to have Officer Peterson continue to press until he relented and agreed. To the contrary, upon seeing a picture of Amanda and learning that she was 13-years-old, Slagle responded to Michelle, "Daughter is very cute…She is only 13?? You are on with her getting f--ked? I would want to make sure as she isn't 18…" and sent two pictures of his erect penis. After Michelle confirmed her approval, Slagle said that he would love to help Michelle teach Amanda how to have intercourse and perform fellatio.

Slagle also argues that he was excessively pressured by law enforcement because, after Michelle first contacted him, she sent him a second email 24 minutes later that included Amanda's photo. We are not persuaded. Officer Peterson testified that he sent Slagle two relatively quick, consecutive emails because he had forgotten to include all of the information in the first email that was responsive to Slagle's Craigslist ad.

Finally, Slagle argues that he was pressured because Officer Peterson was the one who brought up the idea of sex with a minor and gave him Amanda's email address. But Slagle was not forced to act on those offers. In fact, Officer Peterson gave Slagle several "outs." Despite these outs, Slagle continued communicating with Amanda, even going so far as to send her nude pictures and engage her in graphic sexual conversation.

Because Slagle was not persuaded, badgered, or pressured by law enforcement into committing this crime, Slagle does not satisfy the first prong of *Grilli*. We therefore do not address the second prong in the *Grilli* analysis. We conclude that Slagle was not entrapped.

Affirmed.