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STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0850

State of Minnesota,
Respondent,

vs.

Darren Heath Degroot,
Appellant.

Filed April 22, 2019
Affirmed in part, reversed in part, and remanded
Rodenberg, Judge
Concurring in part, dissenting in part, Cleary, Chief Judge

Nobles County District Court
File No. 53-CR-17-129

Keith Ellison, Attorney General, St. Paul, Minnesota;

Kathleen A. Kusz, Nobles County Attorney, Worthington, Minnesota; and

Travis J. Smith, Special Assistant Nobles County Attorney, Slayton, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Anders J. Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Rodenberg, Presiding Judge; Cleary, Chief Judge; and Stauber, Judge.[*]

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

RODENBERG, Judge

Appellant Darren Heath Degroot appeals after the district court found him guilty of attempted third- and fourth-degree criminal sexual conduct; electronic solicitation of a child to engage in sexual conduct (solicitation); electronic communication with a child describing sexual conduct (communication); and electronic distribution of any material, language, or communication that relates to or describes sexual conduct to a child (distribution). He argues that three convictions must be vacated as lesser-included offenses, and cannot be sentenced in any event, because they were part of a single behavioral incident. Finally, appellant argues that the district court erred when it imposed lifetime conditional release because he was convicted of attempted third-degree criminal sexual conduct. We affirm in part, reverse in part, and remand.

FACTS

Appellant was visiting Grindr[1] one morning around 9:30 a.m., from his home in Edgerton. He began messaging the profile of a person named "Johnny." Johnny was actually a decoy profile set up by Special Agent John Nordberg as part of an undercover operation. After a brief exchange, appellant asked if Johnny had ever been with a guy and if he was a "bottom," a term for someone who receives sexual penetration. Johnny responded that he "messed around a bit," but he was "kinda young" and did not know if he was a bottom. Johnny then stated "I'm 14, is that ok?" Appellant replied "[o]h wow u r

[1] Grindr is a social-media platform for, among other things, locating same-sex partners.

young." Despite having been informed that he was talking to a 14-year-old, appellant continued to send sexually explicit messages. He asked if Johnny had ever had anal intercourse and if he was a "tight boy." Appellant also sent several photos of an erect penis and requested that Johnny send a picture of his buttocks.

Johnny gave appellant his cellular phone number, and the two began communicating through text messages as well as the Grindr application. Appellant asked if Johnny would like to try "dad son" which appellant explained as "[u]r my son I'm ur daddy n I do sexy things to u" and "I cuddle u I take shower with u I give u cum in ur hole I play with ur butt n penis I teach u new things." Appellant then asked if Johnny was really 14. Johnny replied that he was and asked if that was ok. Appellant replied "[y]es that's ok bud." He also expressed a desire to have anal intercourse with Johnny.

After Johnny stated that he was home alone, the two arranged for appellant to meet Johnny in Worthington for a sexual encounter. When appellant left his house in Edgerton, he told Johnny he would be in Worthington in 45 minutes. While en route, appellant continued to message Johnny, asking for directions and sending sexually explicit messages including a request for Johnny to perform fellatio on him and a short video of himself saying "hey son, it's your daddy." Johnny directed him to a house where Johnny was supposedly staying. Appellant arrived around 3:00 p.m. He was arrested as he got out of the vehicle. Officers searched appellant and found a leather belt, an enema, personal lubricant, and a plastic spoon.

Appellant was charged with (1) attempted third-degree criminal sexual conduct in violation of Minn. Stat. §§ 609.344, subd. 1(b), and .17, subd. 1 (2016); (2) attempted

fourth-degree criminal sexual conduct in violation of Minn. Stat. §§ 609.345, subd. 1(b) (2016), and .17, subd. 1; (3) electronic solicitation of a child to engage in sexual conduct in violation of Minn. Stat. § 609.352, subd. 2a(1) (2016); (4) electronic communication with a child describing sexual conduct in violation of Minn. Stat. § 609.352, subd. 2a(2) (2016); and (5) electronic distribution of any material, language, or communication that relates to or describes sexual conduct to a child in violation of Minn. Stat. § 609.352, subd. 2a(3) (2016). After a bench trial, the district court found him guilty of all counts.

At sentencing, the district court adjudicated appellant guilty of attempted third-degree criminal sexual conduct, solicitation, and distribution. The district court refrained from adjudicating either the fourth-degree criminal sexual conduct or the electronic-communication offenses. It found that these offenses were necessarily proved by proof of attempted third-degree criminal sexual conduct and electronic solicitation. The district court's warrant of commitment nevertheless indicates that judgment of conviction was entered all five counts.

The district court sentenced appellant on the convictions for attempted third-degree criminal sexual conduct, electronic solicitation, and electronic distribution. It reasoned that the three crimes were not part of one behavioral incident because the offenses were committed at different times and places. The district court also stated without further elaboration that there were different motivations for the three sentenced crimes. Using the *Hernandez*[2] method of sentencing, the district court sentenced appellant in the order that

[2] Under *State v. Hernandez*, a district court sentencing a defendant on the same day for multiple convictions based on multiple offenses that were not part of "a single behavioral

the crimes were committed: a stayed sentence of 15 months in prison on the distribution offense, a stayed sentence of 20 months in prison on the solicitation offense, and an executed sentence of 30 months in prison for attempted third-degree criminal sexual conduct. The district court also imposed a lifetime-conditional-release term. In its sentencing order, and thoughtfully anticipating the then-unresolved legal issue concerning whether appellant's conduct was sufficient to amount to an attempt, the district court stayed the sentences pending appeal.

This appeal followed.

D E C I S I O N

I. The district court did not err in finding appellant guilty of attempted third- and fourth-degree criminal sexual conduct.

Appellant argues that the evidence is insufficient to prove an attempt to commit third- or fourth-degree criminal sexual conduct. "In considering a claim of insufficient evidence, the record is reviewed to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the jurors to reach their verdict." *State v. Olhausen*, 681 N.W.2d 21, 25 (Minn. 2004). Appellate courts use the same standard of review in bench trials. *State v. Palmer*, 803 N.W.2d 727, 733 (Minn. 2011).

To be found guilty of an attempt, the defendant must intend to commit a crime and must take a substantial step toward the commission of that crime. Minn. Stat. § 609.17,

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incident or course of conduct" can increase the defendant's criminal-history score incrementally as each successive sentence is imposed. 311 N.W.2d 478, 481 (Minn. 1981).

subd. 1; *State v. Olkon*, 299 N.W.2d 89, 104 (Minn. 1980). An attempt is an inchoate crime that must be connected to an uncompleted substantive crime. *State v. Noggle*, 881 N.W.2d 545, 549 (Minn. 2016). Here, the substantive crimes charged are third-degree criminal sexual conduct and fourth-degree criminal sexual conduct.

A person commits third-degree criminal sexual conduct when he engages in "sexual penetration" with a complainant who is "at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant." Minn. Stat. § 609.344, subd. 1(b). "Sexual penetration" is defined to include "sexual intercourse, cunnilingus, fellatio, or anal intercourse; or . . . any intrusion however slight into the genital or anal openings." Minn. Stat. § 609.341, subd. 12 (2016). The elements for fourth-degree criminal sexual conduct are the same except it prohibits "sexual contact" rather than "sexual penetration." Minn. Stat. § 609.345, subd. 1(b). "Sexual contact" is defined to include "the intentional touching by the actor of the complainant's intimate parts." Minn. Stat. § 609.341, subd. 11(a)(i) (2016). Accordingly, in order to prove attempted third- and fourth-degree criminal sexual conduct, respectively, the state was required to prove appellant intended to sexually penetrate and have sexual contact with a complainant who is "at least 13 but less than 16 years of age and the actor is more than 24 months older than the complainant" and that he took a substantial step toward sexually penetrating and having sexual contact with that complainant. Minn. Stat. §§ 609.17 (2016), .344, subd. 1(b), .345, subd. 1(b).

Appellant, a 36-year-old man who believed that he was communicating with a 14-year-old child, does not challenge the sufficiency of the evidence concerning his intent. He sent Johnny numerous messages explaining what sexual acts he would like to perform with

him, including anal intercourse, touching Johnny's genitals and buttocks, and fellatio. Appellant arranged to travel to Johnny's house in preparation to perform those acts. This amply proves appellant's intent to sexually penetrate and have sexual contact with a complainant who is "at least 13 but less than 16 years of age" and that appellant is "more than 24 months older than the complainant." *See State v. Edrozo*, 578 N.W.2d 719, 723 (Minn. 1998) (noting that a defendant's own words are directly relevant and highly probative of intent).

In order to prove an attempt crime, the state is also required to prove that appellant took a substantial step toward the commission of the charged offense. Minn. Stat. § 609.17, subd. 1. The supreme court has stated that what constitutes a substantial step for purposes of an attempt largely depends on the particular facts of the case. *State v. Dumas*, 136 N.W. 311, 314 (Minn. 1912). Generally, a person must commit "an overt act or acts tending, but failing, to accomplish" the crime. *Id.* "The overt acts need not be such that, if not interrupted, they must result in the commission of the crime." *Id.* But the act or acts must be more than mere preparation. *Id.*

Our recent decision in *State v. Wilkie* is instructive. 924 N.W.2d 38 (Minn. App. 2019), *pet. for review filed* (Minn. Feb. 27, 2019). In that case, the defendant arranged, through social media, to meet a child to engage in sexual penetration, sent explicit photographs to the child, negotiated to meet at the child's home, obtained directions to the house, went to the location, and knocked on the door. *Id.* at 39-40. We reasoned that the only purpose for the in-person meeting was to engage in sexual penetration and that the defendant's actions were not remote in time or place from the intended crime. *Id.* at 42.

Under these circumstances, we concluded that the evidence was sufficient to prove that the defendant took a substantial step toward committing third-degree criminal sexual conduct. *Id.* at 42-43.

The facts here are similar to those in *Wilkie*. Appellant questioned Johnny, who he believed to be a 14-year-old child, regarding his sexual experience, solicited Johnny to engage in sexual activity, sent explicit photographs, and arranged, via social media, to meet Johnny to engage in sexual contact and penetration. He obtained directions to meet Johnny and drove a significant distance—from Edgerton to Worthington—in order to engage in sexual activity with him. *Cf.* Minn. Stat. Ann. § 609.17 advisory comm. cmt. (West 1963) ("For example, 'A' buys a gun to hold up a bank. . . . If . . . he goes to the bank and on arriving is frightened away by the presence of police this probably would constitute an attempt in most jurisdictions, including Minnesota."). These actions were not remote in time or place from the intended crimes. Upon arrival at Johnny's house, "the only thing left to take place was sexual penetration." *Wilkie*, 924 N.W.2d at 42. Here, the facts amounting to a step toward commission of the charged offenses are at least as substantial as those in *Wilke*. Appellant drove all the way from Edgerton to Worthington, communicating his sexual intent all along the way via electronic communications to who he believed to be a 14-year-old child with whom he wanted to imitate intrafamilial sex acts. He gathered up and brought with him multiple items designed to aid in the encounter he was anticipating. On this record, and in light of our holding in *Wilke*, the evidence is easily sufficient to prove a substantial step toward completion of third- and fourth-degree criminal sexual conduct.

Appellant argues that he cannot be found guilty of attempting sexual conduct with a 14-year-old, because he was in fact communicating with Agent Nordberg, a 47-year-old man, and the state was required to prove the existence of a complainant between the ages of 13 and 16 years old.

At its core, appellant's argument is that it was impossible for him to commit the crimes of third- and fourth-degree criminal sexual conduct and he therefore cannot be guilty of an attempt to commit the impossible crimes. But impossibility is not a defense to an attempt. "An act may be an attempt notwithstanding the circumstances under which it was performed or . . . the act itself were such that the commission of the crime was not possible, unless such impossibility would have been clearly evident to a person of normal understanding." Minn. Stat. § 609.17, subd. 2; *see also State v. Bird*, 285 N.W.2d 481, 482-83 (Minn. 1979) (recognizing that neither factual nor legal impossibility is a defense to an attempt charge under Minn. Stat. § 609.17). The state was not required to prove the existence of a complainant between the ages of 13 and 16 years old in order to prove an attempt.

II. The electronic-distribution charge is an included offense of the solicitation charge.

Appellant next argues that his convictions for attempted fourth-degree criminal sexual conduct, electronic communication with a child describing sexual conduct, and electronic distribution of any material, language, or communication describing or related to sexual conduct to a child must be vacated because all are included offenses of attempted

third-degree criminal sexual conduct. Whether a crime is an included offense is a question of law, which is reviewed de novo. *State v. Cox*, 820 N.W.2d 540, 552 (Minn. 2012).

The state agrees that appellant cannot properly be convicted of the attempted fourth-degree criminal sexual conduct and electronic-communication offenses. At the sentencing hearing, the district court recognized that the attempted fourth-degree criminal sexual conduct and communication offenses are lesser-included offenses. As a result, the district court explicitly declined to adjudicate appellant guilty of those counts. The warrant of commitment, however, indicates that appellant was convicted of those counts. The oral sentence prevails over the written order. *State v. Staloch*, 643 N.W.2d 329, 331 (Minn. App. 2002).

Because the warrant of commitment reflects that appellant was adjudicated of all five counts, we remand to the district court to correct the warrant of commitment and vacate the judgments of conviction erroneously entered for attempted fourth-degree criminal sexual conduct and electronic distribution of sexual material to a child. *See* Minn. R. Crim. P. 27.03, subd. 10 ("Clerical mistakes in a judgment, order, or in the record arising from oversight or omission may be corrected by the court at any time . . . .").

The state argues that the distribution count is not an included offense of solicitation, and that appellant was properly convicted of and sentenced for both of these proved offenses. A defendant "may be convicted of either the crime charged or an included offense but not both." Minn. Stat. § 609.04, subd. 1 (2016). A crime necessarily proved upon proof of another crime is an included offense. Minn. Stat. § 609.04, subd. 1(4). When determining if multiple convictions are prohibited, the court must compare the statutory

elements of both crimes and determine whether the elements of the crimes are different. *State v. Holmes*, 778 N.W.2d 336, 340 (Minn. 2010). In the present context, if it is impossible to commit the solicitation offense without also committing the electronic-distribution offense, then the latter is a lesser-included offense. *State v. Roden*, 384 N.W.2d 456, 457 (Minn. 1986).

The distribution charge is a lesser-included offense of solicitation because proof of the latter necessarily proves the former. Both crimes require an actor who is 18 years of age or older, use of electronic means, and intent to arouse sexual desire of any person. Minn. Stat. § 609.352, subd. 2a (2016). The crimes differ in only one element. The solicitation offense prohibits soliciting a child to engage in sexual conduct, while the distribution offense prohibits distributing any material, language, or communication that relates to or describes sexual conduct to a child. Minn. Stat. § 609.352, subd. 2a(1), (3). "Solicit" is defined to include "commanding, entreating, or attempting to persuade a specific person . . . by computerized or other electronic means." Minn. Stat. § 609.352, subd. 1(c) (2016). "Commanding, entreating, or attempting to persuade" a child necessarily requires that the actor direct some sort of material, language, or communication towards the child. And because the solicitation charge requires that the person solicit the child to engage in sexual conduct, that solicitation necessarily "relates to or describes sexual conduct." We cannot discern how a person could solicit a child "by computerized or other electronic means" to engage in sexual conduct without also distributing a communication that relates to sexual conduct to that child. Accordingly, the electronic-

distribution charge under Minn. Stat. § 609.352, subd. 2a(3), is a lesser-included offense of the solicitation charge under Minn. Stat. § 609.352, subd. 2a(1).

Even though the distribution count is a lesser-included offense, appellant may still be convicted for both crimes if the offenses constitute separate criminal acts. *State v. Bertsch*, 707 N.W.2d 660, 664 (Minn. 2006). Here, the district court based appellant's solicitation conviction on appellant's messages where he planned a sexual encounter with Johnny, and said that he wanted to touch Johnny's genitals, see his buttocks, and make Johnny feel good. The district court recognized that these messages could also form the basis for the distribution conviction. But the court relied on the explicit photographs, video, and discussion of a father/son fetish when it found that the state had proved the distribution charge. We must decide whether these are separate criminal acts.

"The inquiry into whether two offenses are separate criminal acts is analogous to an inquiry into whether multiple offenses constituted a single behavioral incident under Minn. Stat. § 609.035." *Id.* Because appellant also argues that his sentences must be reversed based on Minn. Stat. § 609.035 (2016), the analysis of whether appellant's offenses constitute separate criminal acts is identical to the single behavioral incident analysis below.

III. All five offenses were part of one behavioral incident.

Appellant argues that all five offense were based on the same behavioral incident and that the district court therefore erred by imposing multiple sentences. "[I]f a person's conduct constitutes more than one offense . . . , the person may be punished for only one of the offenses . . . ." Minn. Stat. § 609.035, subd. 1. This means a district court "cannot

impose multiple sentences (even concurrent sentences) for multiple offenses committed against the same victim in a single behavioral incident." *State v. Herberg*, 324 N.W.2d 346, 348 (Minn. 1982). When, as here, multiple charged offenses have an intent element, determining whether a course of conduct consists of a single behavioral incident requires examination of whether the crimes occurred at substantially the same time and place, and whether the conduct was motivated by an effort to obtain a single criminal objective. *State v. Bakken*, 883 N.W.2d 264, 270 (Minn. 2016). But "the essential ingredient" is "whether the segment of conduct involved was motivated by an effort to obtain a single criminal objective." *State v. Bookwalter*, 541 N.W.2d 290, 294 (Minn. 1995) (quotation omitted) (emphasis omitted).

The state bears the burden of showing by a preponderance of the evidence that the conduct underlying multiple offenses did not occur as part of a single behavioral incident. *State v. Williams*, 608 N.W.2d 837, 841-42 (Minn. 2000). Whether the offenses were part of a single behavioral incident is a mixed question of law and fact. *Bakken*, 883 N.W.2d at 270. An appellate court reviews the district court's findings of fact for clear error and its application of the law de novo. *Id.* This inquiry is not "mechanical," but instead requires consideration of all facts and circumstances. *Id.*

We start by determining whether appellant's offenses were motivated by one criminal objective. When analyzing this factor, we consider "whether all of the acts performed were necessary to or incidental to the commission of a single crime and motivated by an intent to commit that crime." *Id.* at 271 (quotation omitted).

Here, all of appellant's acts were motivated by an intent to commit the crime of third-degree criminal sexual conduct. As discussed above, appellant was properly found guilty of attempt because he intended to commit the crime of third-degree criminal sexual conduct and took a substantial step toward committing it. The electronic-solicitation and distribution offenses were committed in order to accomplish the criminal sexual conduct. *See State v. Longo*, 909 N.W.2d 599, 611 (Minn. App. 2018) ("When an offense is committed with the intent of facilitating another offense or is but a means toward committing another offense, the offenses are part of the same behavioral incident."). When appellant solicited Johnny to engage in anal intercourse, his intent was not to stop at solicitation. Appellant desired to actually engage in that sexual activity—as evidenced by appellant's concession on appeal that he intended to commit the sex offenses—and soliciting Johnny was a means to that end. When appellant sent explicit photos, messages, and a video, his actions were part of his attempted grooming of Johnny to engage in sexual activity. *See State v. Muccio*, 890 N.W.2d 914, 924 (Minn. 2017) (noting that sexual predators often expose a child to sexual content in order to desensitize the child and lower the child's inhibitions with respect to later criminal sexual acts). And, as discussed, appellant took a substantial step toward completion of the third-degree criminal sexual conduct. In this context, appellant's purpose in distributing sexual material was "both linked to and designed to facilitate the commission of the later crime" of criminal sexual conduct. *Id.*

It is true that broad statements of criminal purpose do not create a single course of conduct. *Cf. Bakken*, 883 N.W.2d at 271 (concluding possession of multiple images of

child pornography was not a single criminal purpose of satisfying sexual urges). But appellant's actions here were steps toward sexual contact and penetration with Johnny. *Compare State v. Soto*, 562 N.W.2d 299, 304 (Minn. 1997) ("[O]btaining as much money as possible is too broad an objective to constitute a single criminal goal within the meaning of section 609.035."), *with Langdon v. State*, 375 N.W.2d 474, 476 (Minn. 1985) (concluding that stealing "as much money as he could that afternoon from the coin boxes on the washers and dryers in the several laundry rooms within the apartment complex" to be a single criminal objective).

The offenses also occurred at substantially the same time. Although the offenses took place over several hours, they were part of a continuous conversation that culminated with an attempted third-degree sex crime. *See State v. Jones*, 848 N.W.2d 528, 533 (Minn. 2014) (concluding the defendant's offenses occurred at substantially the same time when he sent 33 text messages to the victim in a two-and-a-half-hour span). The offenses took place in separate locations. Appellant sent the explicit photographs and messages from Edgerton but the attempt was completed in Worthington. This does not compel a conclusion that the offenses were not part of one behavioral incident. *See Herberg*, 324 N.W.2d at 349 (concluding that although two acts of criminal sexual conduct occurred in separate places, they were still part of a single course of conduct because the defendant's underlying motivation remained the same). Considering all the facts and circumstances, we conclude that appellant's offenses were all part of one behavioral incident. Accordingly, the district court erred when it imposed multiple sentences.

We reverse and remand for the district court to vacate appellant's convictions for electronic distribution and attempted fourth-degree criminal sexual conduct. We also reverse appellant's multiple sentences and remand to the district court to sentence appellant only for the most serious crime, attempted third-degree criminal sexual conduct. *See State v. St. John*, 847 N.W.2d 704, 708 (Minn. App. 2014) (noting that section 609.035 contemplates that a defendant will be punished for the most serious offense because imposing up to the maximum punishment includes punishment for all offenses).

IV. The district court erred when it imposed a lifetime conditional release.

Appellant argues that the district court erred in imposing a lifetime conditional release. The state agrees. A mandatory lifetime conditional release is imposed when a person is convicted of third-degree criminal sexual conduct and has a previous sex offense. Minn. Stat. § 609.3455, subd. 7(b) (2016). But the statute does not authorize the imposition of a conditional release term when a person is convicted of *attempted* criminal sexual conduct. *Id.*; *see also Noggle*, 881 N.W.2d at 550-51 (holding that Minn. Stat. § 609.3455, subd. 6 (2014), does not authorize the imposition of a ten-year-conditional-release term for attempted third-degree criminal sexual conduct). The district court erred when it imposed a lifetime-conditional-release term.

In sum, we affirm in part, reverse in part, and remand. On remand, the district court must (1) vacate appellant's convictions for electronic distribution of sexual material to a child and attempted fourth-degree criminal sexual conduct, (2) correct the warrant of commitment to reflect convictions for only electronic solicitation and attempted third-

degree criminal sexual conduct, and (3) resentence appellant for only attempted third-degree criminal sexual conduct.

Affirmed in part, reversed in part, and remanded.

CLEARY, Chief Judge (concurring in part, dissenting in part)

While I concur with the majority's opinion, affirming the convictions for electronic communication with a child describing sexual conduct and electronic solicitation of a child to engage in sexual conduct, correcting the warrant of commitment, vacating appellant's convictions for attempted fourth-degree criminal sexual conduct and electronic distribution of sexual material to a child, and remanding for resentencing, I respectfully dissent from the majority's decision to affirm the judgment of conviction for attempted third-degree criminal sexual conduct charges under Minn. Stat. §§ 609.344, subd. 1(b), .345, subd. 1(b) (2016).

The majority concludes that the totality of Degroot's conduct constitutes a substantial step toward committing third- and fourth-degree criminal sexual conduct. I disagree. As I outlined in my dissent in *State v. Wilkie*, conduct such as Degroot's constitutes mere preparation. 924 N.W.2d 38, 43-44 (Minn. App. 2019) (Cleary, C.J., dissenting), *pet. for review filed* (Minn. Feb. 27, 2019). I will not repeat all of my analysis from *Wilkie*, but in summary, the caselaw illustrating "attempt" in felony level sex-related crimes involves physical contact, words delivered in person, or an attack. *See id.* at 43 (discussing caselaw surrounding attempt in sex-related crimes). I believe the majority in *Wilkie* erroneously expanded the legal definition of an "attempt" by concluding that knocking on the front door of a decoy's house—an act that does not involve physical contact, words delivered in person, or an attack—constitutes a substantial step toward a crime that requires sexual penetration. *Id.* at 43-44. In this case, the majority expands that definition even further. Degroot never made it onto property where the criminal conduct

was to occur: the officers immediately arrested him after he parked his vehicle in the lot across the street from the decoy's house. Once again, the majority conflates the Degroot's intent to commit the crime with the drive to the parking lot and labels it "an attempt." Under these circumstances, it cannot be said that Degroot's actions were more than mere preparation.

While Degroot's conduct was repugnant and illegal, the convictions for electronic communication with a child describing sexual conduct and electronic solicitation of a child to engage in sexual conduct more accurately and more specifically address his criminal conduct. Accordingly, I would reverse the judgment of conviction on the attempted third-degree criminal sexual conduct charges and remand for resentencing on the remaining convictions.