STATE OF MINNESOTA
IN COURT OF APPEALS
A19-1256

State of Minnesota,
Respondent,

vs.

Chinomso Emmanuel Onuoha,
Appellant.

Filed July 27, 2020
Affirmed in part, reversed in part, and remanded
Cochran, Judge

Hennepin County District Court
File No. 27-CR-18-2440

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

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Adam Lozeau, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Cochran, Presiding Judge; Johnson, Judge; and Bryan, Judge.

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

COCHRAN, Judge

Following a bench trial, appellant Chinomso Emmanuel Onuoha appeals his convictions for prostitution under Minn. Stat. § 609.324, subd. 1(b)(3) (2016) and

electronic solicitation of a child under Minn. Stat. § 609.352, subd. 2a(1) (2016). He argues that the circumstantial evidence was insufficient to support the convictions. He also argues that the district court erred by entering multiple convictions in violation of Minn. Stat. § 609.04 (2016). We conclude that the evidence was sufficient to support Onuoha's convictions, but that the district court erred in convicting appellant of both offenses. Accordingly, we affirm in part, reverse in part, and remand.

FACTS

The state charged Onuoha with prostitution of an individual aged 13 to 15 under Minn. Stat. § 609.324, subd. 1(b)(3) and electronic solicitation of a child under Minn. Stat. § 609.352, subd. 2a(1). Onuoha waived his right to a jury trial and the case proceeded to a bench trial.

At trial, the state called three law enforcement witnesses who were involved in the operation that led to Onuoha's arrest. On January 26, 2018, officers with the Minnetonka Police Department placed multiple advertisements on backpage.com (Backpage) as a part of the Guardian Angel Operation—an operation targeting individuals seeking and soliciting minors to engage in prostitution. Backpage no longer exists, but in January 2018, it was well known for being a website where people could solicit and engage in prostitution. Police placed the advertisements on the "men seeking women" location of the website—a location where prostitutes would commonly place advertisements.

The advertisements that police posted on this day stated that the posters were 18 or 19 years old. An officer familiar with Backpage testified that Backpage will "pull the ad immediately" if the poster indicated that he or she was under 18 years old. Each

advertisement included a phone number, the fictitious person's general location, and the fictitious person's age. The advertisements included photographs of women above the age of 18. They did not explicitly advertise sexual services.

When a person responded to an advertisement, an officer would portray himself as the fictitious person who posted it. Onuoha responded to one of the advertisements by texting the phone number on the advertisement. The state submitted as evidence the text message conversation between Onuoha and the fictitious person. Onuoha told the fictitious person that he was looking for someone to "meet twice a week." The following exchange then occurred:

> FP[1]: ok whats ur age and race?
>
> A: I am 25 and a respectful black
>
> A: would you be willing to have something ongoing?
>
> FP: ok im 15 and spunky white :-) and yes
>
> A: ok cool. when are you free?

An officer with training and experience in investigating prostitution testified that a "larger percentage" of potential buyers will disengage a conversation when they learn that the fictitious person is under 18. Onuoha did not disengage.

Onuoha and the fictitious person then discussed the price for a half hour or a full hour of the fictitious person's time, where the fictitious person was located, the fictitious person's physique, whether the fictitious person would "go multiple times," and whether

[1] We refer to the fictitious person as "FP" and Onuoha as "A".

the fictitious person would be "cool with [them] tongue kissing a lot." He attempted to negotiate a lower price with the fictitious person because he planned to see her multiple times per week. During this negotiation, both Onuoha and the fictitious person used slang that, according to witness testimony, is commonly used in prostitution transactions. When the fictitious person indicated that she would consider a lower rate, the following exchange occurred:

> A: ok cool. Just to confirm are u 15 or 16?
>
> FP: 15
>
> A: umm. That might be a problem. It would be better if u were at least 16
>
> A: I could get in trouble for seeing someone who's less than 16
>
> FP: oh. well lmk then if u don't want to come i wont be mad
>
> A: I will still come at least to get to know u. How does 6:30 sound?
>
> FP: ok hit me up later i thought u were coming now, but ill be around tonight too
>
> A: Sorry about that. Are you usually available most days of the week?
>
> FP: no I skipped out of school today. i don't actually post that much
>
> A: What about at night?
>
> FP: sometimes today i am good all day
>
> A: ok

About three hours later, Onuoha contacted the fictitious person and discussed when he could meet with her. The fictitious person gave instructions on how to reach her location. Onuoha followed the instructions, appeared at the apartment that he was led to, and was arrested by police. An officer searched Onuoha. The officer found Onuoha's cell phone, wallet, driver's license, and a college ID. Onuoha did not have any money or condoms.

Onuoha testified about his upbringing, his struggles with relating to women, and his pursuit of a romantic relationship that purportedly led to this incident. Onuoha testified that he began using Backpage after unsuccessfully attempting to find relationships on other dating websites. He testified that he had arranged other meetups with women through Backpage, but that those women's characteristics—specifically their age, gender, or race—were not consistent with the characteristics identified on their Backpage posting. He testified that at one meeting with a woman from Backpage, he was robbed. Consequently, Onuoha stopped bringing valuables to meetings that he arranged on Backpage. Onuoha found one relationship that he considered successful on Backpage, but that woman moved away and he lost contact with her.

Onuoha testified that his goal in using Backpage was to find a companion, but that if the relationship "turned out to also be sexual," he was "fine with that." He testified that he was willing to pay for companionship and that he was "okay" if he also ended up having sex with the person.

Onuoha testified that he knew that the fictitious person was an escort. He admitted that when he discussed meeting with the fictitious person, he was discussing meetings

involving sexual contact. And Onuoha acknowledged that he read the text message in which the fictitious person revealed that she was 15 years old. But Onuoha testified that when he responded "ok cool. when are you free" to that message, he was not paying attention to her age. He also testified that he only went to the apartment to "verify what the situation was and who [the fictitious] person was." He claimed that he did not intend to have sex with the fictitious person, and that was the reason that he did not bring money or condoms. He testified that if he found out the person was underage, he would have walked out "immediately."

The district court issued written findings of fact and conclusions of law and an order finding Onuoha guilty of both counts. The district court adjudicated Onuoha guilty of both counts but only imposed a sentence on the prostitution conviction.

Onuoha appeals.

D E C I S I O N

Onuoha argues that the evidence introduced at trial was insufficient to support his convictions for prostitution and electronic solicitation of a child. He also argues that his multiple convictions violate Minn. Stat. § 609.04. We address each issue in turn.

I. The evidence was sufficient to support both convictions.

Onuoha maintains that the evidence introduced at trial was insufficient to prove beyond a reasonable doubt that he is guilty of either prostitution or electronic solicitation of a child. The state argues that the evidence was sufficient to support both convictions. We first consider the appropriate standard of review and then address whether the evidence was sufficient to support Onuoha's convictions.

A. We review the sufficiency of the evidence under the circumstantial-evidence standard of review.

The parties disagree over whether the traditional direct-evidence standard or the heightened circumstantial-evidence standard applies to our review of the sufficiency of the evidence. The state argues that the traditional direct-evidence standard applies because Onuoha's text messages to the fictitious person are direct evidence of his intent and beliefs.

The circumstantial-evidence standard is appropriate when the conviction is based on circumstantial evidence, meaning that proof of the offense, or a single element of the offense, is based solely on circumstantial evidence. *State v. Fairbanks*, 842 N.W.2d 297, 307 (Minn. 2014). Circumstantial evidence is "evidence from which the [fact-finder] can infer whether the facts in dispute existed or did not exist." *State v. Harris*, 895 N.W.2d 592, 599 (Minn. 2017) (quotation omitted). Direct evidence, on the other hand, is evidence "based on personal knowledge or observation and that, if true, proves a fact without inference or presumption." *Id.* (quotation omitted). The traditional direct-evidence standard applies "when a disputed element is sufficiently proven by direct evidence alone." *State v. Horst*, 880 N.W.2d 24, 39 (Minn. 2016).

Onuoha's text messages do not directly demonstrate his belief regarding the fictitious person's age or his intent without inference or presumption. Instead, his text messages must be interpreted to infer whether he believed that the fictitious person was 15 years old, at what point he developed that belief, and whether he intended the fictitious person to engage in sexual conduct with him. Because there is no direct evidence of

Onuoha's belief and intent, we review the sufficiency of the evidence under the circumstantial-evidence standard of review.

A conviction based on circumstantial evidence "warrants heightened scrutiny." *State v. Al-Naseer*, 788 N.W.2d 469, 473 (Minn. 2010). When the conviction is based on circumstantial evidence, we conduct a two-step analysis. *See Harris*, 895 N.W.2d at 601 (describing the two-step circumstantial-evidence standard of review in an appeal following a jury trial). We apply the same standard of review to a sufficiency-of-the-evidence claim following a court trial that we would following a jury trial. *See State v. Franks*, 765 N.W.2d 68, 73 (Minn. 2009). First, we identify the circumstances proved at trial, disregarding evidence that is not consistent with the fact-finder's verdict. *Harris*, 895 N.W.2d at 601. Second, we consider the reasonable inferences that can be drawn from the circumstances proved. *Id.* At this stage of the analysis, we give no deference to the fact-finder's choice among reasonable inferences. *Id.* "To sustain [a] conviction, the circumstances proved, when viewed as a whole, must be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt." *Id.* But, "[w]e will not overturn a conviction based on circumstantial evidence on the basis of mere conjecture." *State v. Andersen*, 784 N.W.2d 320, 330 (Minn. 2010) (quotation omitted). "This is because the State's burden is not to remove *all* doubt but to remove all *reasonable* doubt." *State v. German*, 929 N.W.2d 466, 472 (Minn. App. 2019) (quotation omitted). Applying the two-step analysis, we conclude that the evidence was sufficient to sustain both convictions.

B. The evidence was sufficient to support Onuoha's conviction of engaging in prostitution under Minn. Stat. § 609.324, subd. 1(b)(3).

A person is guilty of prostitution of an individual aged 13 to 15 if he (1) intentionally (2) hires or offers or agrees to hire (3) an individual who the actor reasonably believes to be under the age of 16 years but at least 13 years (4) to engage in sexual penetration or contact.[2] Minn. Stat. § 609.324, subd. 1(b)(3). The elements in dispute on appeal are whether Onuoha reasonably believed that the fictitious person was 15 years old and whether, at the time he offered or agreed to hire the fictitious person, he held the belief that she was 15 years old.

The circumstances proved relevant to this offense include the undisputed substance of Onuoha's text message conversation with the fictitious person. In that conversation, the fictitious person revealed that she was 15 years old before Onuoha negotiated the price, duration, and substance of sexual acts. Then, Onuoha asked the fictitious person to "confirm" whether she was 15 or 16 years old, despite having no information to suggest that the fictitious person was 16 years old. In the same text message, Onuoha indicated that he could get in trouble if the fictitious person was not at least 16 years old. Onuoha told the fictitious person that he would still come to meet her to get to know her. Thereafter, the fictitious person texted Onuoha directions to her location. In addition to the content of the text messages, the other circumstances proved include: that Onuoha responded to an

[2] "Sexual contact" means "the intentional touching by an individual of a prostitute's intimate parts" or "the intentional touching by a prostitute of another individual's intimate parts" if the act "can reasonably be construed as being for the purpose of satisfying the actor's sexual impulses." Minn. Stat. § 609.321, subd. 10 (2016).

advertisement on Backpage that indicated that the poster was 18 or 19 years old; that the advertisement contained a photograph depicting an adult woman; that Onuoha appeared at the apartment that the fictitious person directed him to; that Onuoha had previously been robbed at a meeting that he set up through Backpage, and he consequently stopped bringing valuables to meetings he arranged on the website; and that Onuoha did not bring money or condoms to the apartment but did have his phone, wallet, and identification with him.[3]

Onuoha concedes that the circumstances proved are consistent with a reasonable inference that he is guilty. But he argues that a rational hypothesis of innocence is consistent with the circumstances proved—specifically, that it is rational to infer from the circumstances proved that he did not believe that the fictitious person was 15 years old until she confirmed it a second time in the text message conversation, and that after that point, he did not intentionally hire, offer to hire, or agree to hire the fictitious person to engage in sexual conduct. The state argues that Onuoha's alternative hypothesis is unreasonable given the circumstances proved.

We conclude that the hypothesis that Onuoha did not offer to hire the fictitious person at a time he believed her to be 15 years old is inconsistent with the circumstances proved. Onuoha negotiated the price, duration, and substance of sexual acts with the fictitious person after she revealed that she was 15 years old. He admitted that he read the fictitious person's text message that she was 15 years old. And when he later texted her to

[3] We disregard evidence that is inconsistent with the district court's guilty verdict and, consequently, do not consider Onuoha's testimony that he was not paying attention to the fictitious person's age when she first stated it. *Harris*, 895 N.W.2d at 601.

"confirm" her age, his confirmation text message did not indicate any genuine doubt as to her age. He did not ask her whether she was 18 or 19, consistent with the Backpage advertisement. Instead, he asked her "to confirm" whether she was "15 or 16," told her that "it would be better" if she were at least 16, and indicated that he could get in trouble if she was not at least 16 years old. His statements that "it would be better" if the fictitious person was 16 and that he "could get in trouble" if she was not at least 16 are reasonably interpreted as a suggestion that the fictitious person identify herself as 16 years old so that Onuoha could engage in a sexual relationship with the fictitious person without getting in trouble. This interpretation is reinforced by the fact that, when he asked the fictitious person to confirm whether she was "15 or 16," Onuoha had no basis to think that she was 16, and not 15. Prior to his request for confirmation of her age, the only information that she had provided to Onuoha during the text message conversation was that she was 15 years old.

Viewed as a whole, the circumstances proved do not support Onuoha's alternative hypothesis that he did not reasonably believe the fictitious person was 15 years old at the time he offered to hire her to engage in sexual contact. It is not rational to conclude that Onuoha had any real doubt as to the fictitious person's age at the time he negotiated with her. We therefore conclude that the evidence was sufficient to prove that Onuoha is guilty of prostitution of an individual aged 13 to 15 under Minn. Stat. § 609.324, subd. 1(b)(3).

C. The evidence was sufficient to support Onuoha's conviction of electronic solicitation of a child under Minn. Stat. § 609.352, subd. 2a(1).

Onuoha also argues that the evidence was insufficient to prove that he is guilty of electronic solicitation of a child under Minn. Stat. § 609.352, subd. 2a(1). Again, we are not persuaded.

A person is guilty of electronic solicitation of a child if (1) he is 18 years of age or older, (2) using an electronic communication system (3) he solicits someone he reasonably believes is a child to engage in sexual conduct, and (4) he has the intent to arouse the sexual desire of any person. Minn. Stat. § 609.352, subd. 2a(1). In this context, "child" means "a person 15 years of age or younger." *Id.*, subd. 1(a) (2016). The only elements at issue on appeal are whether Onuoha reasonably believed that the fictitious person was a child and whether he solicited the person to engage in sexual conduct at the time he believed the fictitious person was a child.

Solicitation means "commanding, entreating, or attempting to persuade a specific person in person, by telephone, by letter, or by computerized or other electronic means." Minn. Stat. § 609.352, subd. 1(c) (2016). In *State v. Koenig*, the supreme court clarified the definition of "solicit" used in the statute:

> "Solicit" is defined as "commanding, entreating, or attempting to persuade a specific person." Minn. Stat. § 609.352, subd. 1(c) (2002). The dictionary definition of "solicit" is "[t]o seek to obtain by persuasion, entreaty, or formal application." While we do not rely on this definition of solicit because the statute provides a definition, we note that the statute's definition appears to be in accord with the general understanding of the word "solicit." "Entreat" is defined as "[t]o make an earnest request of." "Earnest" is defined as "[m]arked by or showing deep sincerity or seriousness."

> Regarding an attempt to persuade, an "attempt" is defined as "[a]n effort or try." "Persuade" means "[t]o cause (someone) to do something by means of argument, reasoning, or entreaty." "Command" means "[t]o direct with authority; give orders to." The statute requires that the acts of commanding, entreating, or attempting to persuade be directed at a specific person. Minn. Stat. § 609.352, subd. 1(c).

666 N.W.2d 366, 373 (Minn. 2003) (citations omitted). "Solicitation, like the offer to engage in sexual conduct for hire, is an inchoate activity which permits application of Minn. Stat. § 609.352 to conduct that is in some degrees ambiguous." *State v. McGrath*, 574 N.W.2d 99, 102 (Minn. App. 1998) (quotation omitted), *review denied* (Minn. April 14, 1998).

Onuoha maintains that the hypothesis that he did not believe the fictitious person to be 15 years old until she confirmed it, and did not solicit the fictitious person thereafter, is rational and consistent with the circumstances proved. For many of the same reasons that we affirm the sufficiency of the evidence of the prostitution conviction, we conclude Onuoha's hypothesis is not rational given the circumstances proved. As discussed above, it is not rational to conclude, given the circumstances proved, that Onuoha did not believe that the fictitious person was not 15 years old when he negotiated sexual services. Considering the explicit text messages negotiating the price, substance, and duration of sexual services and the fact that Onuoha appeared at the apartment after these negotiations, it is not rational to believe that Onuoha's text messages after the fictitious person confirmed her age were not a continuation of his efforts to establish an ongoing sexual relationship with the fictitious person. Consequently, we conclude that the evidence was sufficient to prove that Onuoha solicited the fictitious person to engage in sexual contact at a time that

he reasonably believed her to be 15 years old, and that the evidence was sufficient to support his conviction.

II. The district court erred by convicting Onuoha of both prostitution and electronic solicitation of a child.

Onuoha next asserts that the district court erred by convicting him of both prostitution and electronic solicitation of a child in violation of Minn. Stat. § 609.04. The state agrees that we should reverse and remand with instructions to vacate one of the convictions.

Section 609.04 provides that a person "may be convicted of either the crime charged or an included offense, but not both." The statute provides that an offense is an included offense of the crime charged if it is "necessarily proved if the crime charged were proved." Minn. Stat. § 609.04. Application of section 609.04 is a question of law, which we review de novo. *State v. Chavarria-Cruz*, 839 N.W.2d 515, 522 (Minn. 2013).

We conclude that the parties are correct that each crime for which Onuoha was convicted was "necessarily proved" when the state proved the other. Consequently, we reverse in part and remand with instructions that the district court vacate one conviction and correct the warrant of commitment, but keep its finding of guilt in place pursuant to the procedure outlined in *State v. LaTourelle*, 343 N.W.2d 277, 284 (Minn. 1984).

Affirmed in part, reversed in part, and remanded.