

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 108019
 v. :
 :
 THOMAS TEWELL, :
 :
 Defendant-Appellant. :

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 19, 2019

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-18-630713-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Daniel T. Van, Assistant Prosecuting Attorney, *for appellee*.

Mark A. Stanton, Cuyahoga County Public Defender, and Robert Blanchard McCaleb, Assistant Public Defender, *for appellant*.

RAYMOND C. HEADEN, J.:

{¶ 1} Defendant-appellant Thomas Tewell (“Tewell”) appeals his conviction of unauthorized use of property in violation of R.C. 2913.04(C). For the reasons that follow, we affirm.

I. Factual and Procedural History

{¶ 2} At all times relevant, Tewell was employed as a police officer with the Cleveland Police Department.

{¶ 3} Tewell met a young woman, M.L., on the Tinder dating app around November 2017. Because Tinder requires users to be at least 18 years old, M.L. misrepresented herself on Tinder as being 18 years old rather than her actual age of 17. After communicating via Tinder, M.L. provided Tewell with her cell phone number and they sent text messages to one another. On January 5, 2018, Tewell met M.L. for the first time when he took her to breakfast. After the breakfast date, Tewell became suspicious as to whether M.L. was, in fact, 18 years old.

{¶ 4} Tewell was interested in pursuing a sexual relationship with M.L. but did not want to engage in a sexual relationship with a minor. On January 5, 2018, to confirm M.L.’s age, Tewell accessed the Law Enforcement Automated Data System (“LEADS”) that was available to him through his employment as a police officer. By running a LEADS search on M.L., Tewell learned M.L.’s actual age was 17. M.L. would not turn 18 until February 5, 2018. Tewell continued to communicate, via text, with M.L. but they did not meet again in person.

{¶ 5} For reasons unrelated to this case, M.L.'s mother gained access to M.L.'s cell phone on February 2, 2018, and discovered the text messages exchanged between Tewell and M.L. and pictures sent by Tewell to M.L. Due to the text messages and the graphic nature of the pictures — specifically a photograph of Tewell's genitalia — M.L.'s mother registered a complaint with the Cleveland Police Department on February 5, 2018. An investigation was initiated by the Cleveland Police Department. Because M.L. lived in Rocky River at the time of the alleged events, the case was referred to the Rocky River Police Department.

{¶ 6} On July 17, 2018, Tewell was indicted under Cuyahoga C.P. No. CR-18-630713-A for one count of unauthorized use of property, in violation of R.C. 2913.04(C), and one count of disseminating matter harmful to juveniles, in violation of R.C. 2907.31(A)(1).

{¶ 7} Tewell's case proceeded to trial on October 29, 2018. The state presented testimony from M.L. and her mother, as well as John Moore, a LEADS administrator, Richard Johnson, a digital forensics examiner, and law enforcement officers, Jason Steckle and Tracey Hill. After deliberations, the jury returned a guilty verdict on Count 1, the unauthorized use of property, and a not guilty verdict on Count 2, disseminating matter harmful to juveniles.

{¶ 8} On November 30, 2018, the court sentenced Tewell to one year of community control. Tewell timely filed this appeal.

II. Law and Analysis

{¶ 9} Tewell presents one assignment of error for our review, arguing his conviction for violating the LEADS statute was not supported by sufficient evidence.

{¶ 10} In reviewing a challenge to the sufficiency of the evidence, the appellate court must determine whether the prosecution met its burden of production at trial. *State v. Freeman*, 8th Dist. Cuyahoga No. 106374, 2018-Ohio-3587, ¶ 17, citing *State v. Bowden*, 8th Dist. Cuyahoga No. 92266, 2009-Ohio-3598, ¶ 12. The appellate court does not consider “the credibility of the evidence but whether, if credible, the evidence presented would support a conviction.” *State v. Cunningham*, 8th Dist. Cuyahoga No. 106109, 2018-Ohio-4022, ¶ 12, citing *State v. Thompkins*, 78 Ohio St.3d 380, 387, 678 N.E.2d 541 (1997). “The relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259, 574 N.E.2d 492 (1991), paragraph two of the syllabus.

{¶ 11} Tewell was convicted under R.C. 2913.04(C), which makes it a crime to knowingly:

gain access to, attempt to gain access to, cause access to be granted to, or disseminate information gained from access to the law enforcement automated database system [LEADS] created pursuant to section 5503.10 of the Revised Code without the consent of, or beyond the scope of the express or implied consent of, the chair of the law enforcement automated data system steering committee.

Tewell argues that the state did not prove beyond a reasonable doubt that he exceeded the express or implied consent of the chair of the LEADS steering committee.

{¶ 12} To meet its burden of production at trial, the state had to show Tewell knowingly gained access to LEADS and that access exceeded the implied or express consent of the chair of the LEADS steering committee. The record demonstrates the state met its burden of proof.

{¶ 13} John Moore, a LEADS administrator, and Jason Steckle, a member of the internal affairs department of the Cleveland Police Department, testified about the purpose of LEADS and the individuals who have access to the system.

{¶ 14} LEADS is a database utilized exclusively for criminal justice purposes. (Tr. 217.) Information available on LEADS includes, but is not limited to, warrants, license plate data, driver's license information, criminal history, and personal information including social security numbers and dates of birth. (Tr. 219-220.) Only certified users have access to LEADS. (Tr. 217.) Criminal justice employees receive training and pass a test to become certified users of LEADS.

{¶ 15} Certified users may utilize the system for the administration of criminal justice, which is defined in Ohio Adm.Code 4501:2-10-01(A):

“Administration of criminal justice” means the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. It also includes criminal identification activities; the collection, storage, and dissemination of criminal history record information; and criminal justice employment. In addition, administration of criminal justice includes “crime

prevention programs” to the extent access to criminal history record information is limited to law enforcement agencies for law enforcement programs (e.g. record checks of individuals who participate in “Neighborhood Watch” or “safe house” programs) and the result of such checks will not be disseminated outside the law enforcement agency.

{¶ 16} LEADS administrators are responsible for ensuring compliance with the rules that apply to LEADS. (Tr. 217.) Every police officer in the state of Ohio must follow those rules; police officers are retrained on the LEADS system and its related rules either annually or biannually. (Tr. 310.) The LEADS steering committee oversees the ethical and proper usage of the system. (Tr. 309.)

{¶ 17} A general police order exists within the Cleveland Police Department stating that LEADS is not to be used for personal reasons. (Tr. 248-249.) It is not permissible for a certified user to access LEADS for personal reasons such as checking on a relative’s criminal record or gaining personal information about a potential date. (Tr. 221.) LEADS cannot be accessed to determine the age of an individual with whom the requesting officer wants to have sex. (Tr. 245.) Moreover, it is not permissible for a certified user to use LEADS in an attempt to personally avoid committing a crime. (Tr. 224.) A certified user may access LEADS exclusively for law enforcement purposes. (Tr. 238.)

{¶ 18} As part of his employment as a Cleveland police officer, Tewell became a certified user of the LEADS system. As documented by a LEADS data programming sheet, Tewell accessed the LEADS system on January 5, 2018, and obtained the driving record of M.L., including her date of birth. (Tr. 222, 226.)

{¶ 19} The purpose of LEADS is to further criminal justice purposes such as preventing crime or apprehending a criminal. Tewell accessed LEADS on January 5, 2018, to determine whether M.L. was 18 years old. Tewell wanted to engage in a sexual relationship with M.L. and he first wanted to verify she was 18 years old. The Cleveland Police Department did not have any law enforcement business with M.L. on January 5, 2018, that required a LEADS search. (Tr. 240.) Tewell's use of LEADS exceeded the permitted application of the program.

{¶ 20} Tewell's argument that his LEADS search involved a criminal justice or law enforcement purpose — to ensure he did not engage in sexual relations with an individual under the age of 18 — is not persuasive. The issue is not Tewell's intended use of the information once it is obtained through LEADS. Rather, the focus is whether Tewell had a legitimate work-related reason to access LEADS. Seeking access to the LEADS database, absent a legitimate criminal justice purpose, violates R.C. 2913.04(C). The record demonstrates Tewell's use of LEADS was unrelated to a criminal justice purpose, and therefore, exceeded the consent granted to certified users.

{¶ 21} Despite his claim of indigency, we do not waive any costs associated with this appeal. Tewell has, or has the potential to obtain, gainful employment, and therefore, is capable of earning an income to pay the costs associated with this appeal.

{¶ 22} For the foregoing reasons, we conclude that there was sufficient evidence that Tewell knowingly accessed LEADS for his own personal benefit rather

than for a legitimate law enforcement purpose. Accordingly, Tewell's assignment of error is overruled.

{¶ 23} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending appeal is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

RAYMOND C. HEADEN, JUDGE

**LARRY A. JONES, SR., P.J., and
MICHELLE J. SHEEHAN, J., CONCUR**