

COURT OF APPEALS OF OHIO

**EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA**

STATE OF OHIO, :
 :
 Plaintiff-Appellee, :
 : No. 108049
 v. :
 :
 KHALED NASSER MORRA, :
 :
 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-18-629227-A

Appearances:

John B. Gibbons, *for appellant.*

Michael C. O'Malley, Cuyahoga County Prosecuting
Attorney, and Carl Sullivan, Assistant Prosecuting
Attorney, *for appellee.*

PATRICIA ANN BLACKMON, J.:

{¶ 1} Khaled Nasser Morra (“Morra”) appeals from his convictions for importuning and possession of criminal tools and assigns the following error for our review:

I. The judgment entry of conviction and sentence against defendant-appellant, Khaled Nasser Morra for the separate offenses of importuning and possession of criminal tools were contrary to the manifest weight of the evidence.

{¶ 2} Having reviewed the record and pertinent law, we affirm the trial court's judgment. The apposite facts follow.

{¶ 3} On May 29, 2018, the Ohio Internet Crimes Against Children Task Force ("OICAC") set up an undercover sting operation at a house in Newburgh Heights. OICAC investigator Beth Crano ("Crano") posed as an underage female on various dating websites. Crano listed her age as 38, because profiles of minors are prohibited on these sites, but posted pictures of what appeared to be a teenaged girl. When online responses to the profile showed interest in the "bait," Crano switched to communication via cell phone texting.

{¶ 4} Crano began texting with Morra after Morra responded to the profile. One of Crano's texts stated that she was 14 years old, and in another text, Crano sent Morra the two pictures of what appeared to be the teenaged girl from her profile. Morra responded by texting: "oh damn. Yea, you're pretty young. What are you doing on those apps?"; "You're too young, damn!"; "We can still chill, cutie"; and "I'm down to chill!" Ultimately, Morra agreed to drive from Medina to the designated location in Newburgh Heights. When Morra arrived, he stayed in his vehicle and texted Crano to come outside so he could see her. Crano did not come outside of the house.

{¶ 5} Ultimately, several undercover officers exited the house and approached Morra's vehicle. Morra fled the scene, and the officers followed him. Shortly thereafter, Morra was apprehended, and his cellphone and truck were confiscated. On June 12, 2018, Morra was charged with importuning in violation of R.C. 2907.07(D)(2), a fifth-degree felony; attempted unlawful sexual conduct with a minor in violation of R.C. 2923.02 and 2907.04(A), a fifth-degree felony; and possessing criminal tools in violation of R.C. 2923.24(A), a fifth-degree felony, with a forfeiture clause.

{¶ 6} On December 3, 2018, Morra's case was tried to the bench, and the court found him guilty of importuning and possession of criminal tools with regard to his cell phone. The court sentenced Morra to two years of community control sanctions and advised him of his reporting requirements as a Tier I sex offender. It is from these convictions that Morra now appeals.

Manifest Weight of the Evidence

{¶ 7} In *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25, the Ohio Supreme Court addressed the standard of review for a criminal manifest weight challenge, as follows:

The criminal manifest weight of the evidence standard was explained in *State v. Thompkins*, 78 Ohio St.3d 380, 1997 Ohio 52, 678 N.E.2d 541 (1997). In *Thompkins*, the court distinguished between sufficiency of the evidence and manifest weight of the evidence, finding that these concepts differ both qualitatively and quantitatively. *Id.* at 386, 678 N.E.2d 541. The court held that sufficiency of the evidence is a test of adequacy as to whether the evidence is legally sufficient to support a verdict as a matter of law, but weight of the evidence addresses the evidence's effect of inducing belief. *Id.* at 386-387, 678 N.E.2d 541. In

other words, a reviewing court asks whose evidence is more persuasive — the state’s or the defendant’s? We went on to hold that although there may be sufficient evidence to support a judgment, it could nevertheless be against the manifest weight of the evidence. *Id.* at 387, 678 N.E.2d 541. “When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as a ‘thirteenth juror’ and disagrees with the factfinder’s resolution of the conflicting testimony.” *Id.* at 387, 678 N.E.2d 541, citing *Tibbs v. Florida* (1982), 457 U.S. 31, 42, 102 S.Ct. 2211, 72 L.Ed.2d 652.

{¶ 8} An appellate court may not merely substitute its view for that of the jury, but must find that “in resolving conflicts in the evidence, the jury clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered.” *Thompkins* at 387. Accordingly, reversal on manifest weight grounds is reserved for “the exceptional case in which the evidence weighs heavily against the conviction.” *Id.*

Trial Testimony

{¶ 9} The following evidence was presented at Morra’s trial.

{¶ 10} Crano testified that the task force’s goal is to investigate “those who are looking to sexually exploit children.” As part of her job, she sets up various profiles on dating websites. The information associated with her profiles states that she is an adult, but the pictures associated with her accounts purport to be teenaged girls. According to Crano, “If I create a profile and said hey, I’m 13 years old, that profile would never be able to be created. It would stop at the creation period.” When she begins texting with a “match” from a website, she tells them she is a minor.

“I tell them that I’m underage and I’ll tell them how old I am,” because “if I start telling them that I’m underage right on the app I’ll get deleted.”

{¶ 11} On May 29, 2018, Crano was acting as a “chatter” in an undercover sting operation for OICAC. She created an account on a website called HotorNot using the name “Kailee.” Crano chose the birthdate June 30, 1980, which would have made “Kailee” 37¹ years old, and posted two images of a teenaged girl. “And the reason I did this — Normally when I create an account I create an age that is absurdly old. * * * Because if you look at that face and you look at that age, you know that that’s not accurate.” Once the profile is set up, Crano’s practice is to “like every single” person she is presented with.

{¶ 12} According to Crano, “[o]nce that line of communication was opened up,” she received a message from Morra. This message read: “What’s up sexy?” Electronic conversation between Crano’s undercover profile and Morra continued, including the following messages from Morra: “You’re super sexy. We should chill a little” and “Hell, yeah. I’ll pick you up or come chill if you’re down.” After this, the two exchanged phone numbers and began texting. Crano received the first text message from Morra at 3:20 p.m., and their banter continued until 6:52 p.m., as follows:

Morra: Hey what’s up, sexy. It’s Khaled.

Morra: So we chilling today?

¹ Throughout trial, all parties stated that “Kailee’s” profile age was 38; however, on May 29, 2018, a person who was born on June 30, 1980 would have been 37.

Crano: Maybe lol.

Morra: Mmm, what do I have to do to chill with your sexy ass?

Crano: I mean, I want to, but I never done anything like this before.

Morra: What do you mean, cutie?

Crano: I never met anyone like this before.

Crano: I'm younger. I don't know if you picked up on that.

Morra: How young lol.

Morra: Send some pictures, cutie.

Crano: 14

Morra: Yeah, you're pretty young. What are you doing on those apps?

Crano: I don't know. Seeing what I can find lol. What you doing on there?

Morra: Just wanna have fun and hook up with cute girls lol.

Crano: Okay, cool.

Morra: Send some pics.

Crano: [Sent the two profile photographs of what appeared to be a teenaged girl.]

Crano: You get those?

Morra: Yes. Lol. You're too young, damn.

Crano: Seriously?

Morra: What????

Crano: I was wondering if you were being serious. It's okay if you are. You're just hot, so I'm kinda disappointed.

Morra: Well, damn. We can still chill, cutie. I don't know. What do you like to do?

Crano: Okay. You sure? I won't take it personally because you're being so nice about it.

Morra: It's all good. I'm down to chill.

Morra: When are you free?

Crano: To be honest, right now ha ha.

Morra: Ha ha, damn. I'm at work. Can I come to your place or something or pick you up?

Crano: Okay. What time you work until, though?

Morra: 6.

Morra: Are you going to be free?

Crano: Yeah. No one's going to be home until after 10.

Morra: Okay. Cool. Should I just come over after work?

Morra: What's address?

Crano: Um, if you want. What all we gonna do, though?

Morra: I'm down for whatever. Do you smoke or anything?

Crano: Never smoked before.

Morra: We can smoke if you want to try it.

Crano: I don't know. Maybe.

Crano: If it fun.

Morra: Hell, yeah, of course it's fun lol.

Crano: Lol you're talking about weed, right?

Morra: Yes, of course lol.

Crano: Okay. Just making sure ha ha.

Morra: Ha ha, yeah, but I'm down. I'll come by after work.

Crano: Okay, what else we doing?

Morra: Get some food or something. I don't know. Up to you.

Crano: I'm not really hungry, though.

Morra: Well, we can just smoke and hang out and get to know each other.

Crano: Oh, I have friends that I can hang out with, though.

Morra: Oh, okay lol.

Crano: You look fun to hang with, though.

Morra: For sure. Let's do it.

Morra: Be off soon, cutie.

Crano: I want to, but I'm not going to let you drive all the way out here just to smoke lol. That's ridiculous.

Morra: Okay, well, I thought you wanted to chill lol.

Crano: Wait, what kind of chill?

Morra: Ha ha, it doesn't matter. Are you trying to f**k???

Crano: I don't know. Maybe.

Morra: Well, shit. If you can handle all of me.

Morra: I'm down.

Crano: Wait, what do you mean by that, ha ha.

Morra: Well, I'm pretty big down there.

Morra: Send me some nudes, I'll send you some back.

Crano: I don't send pics like that. I got in trouble before for just like underwear pics.

Crano: Sorry, no offense.

Morra: ??? No one's going to see it lol. I'm trying to make sure you're real?

Crano: ??

Crano: What do you mean make sure I'm real?

Crano: I'm not sending nudes.

Crano: So fuck off if that's all you wanted from me.

Morra: I'm trying to chill???

Morra: I don't even want them anymore lol.

Morra: Damn.

Crano: I'm sorry, but I get that from people all the time and I don't have time for that.

Morra: I feel it. Well, I don't know. Do you still want to chill when I'm off? Let me know.

Crano: Yeah.

Morra: Okay, cool. What's the address??

Crano: Wait, so chill, like you mean sex?

Morra: If that's what you want lol. I just want to meet you and see where things go.

Crano: Sounds like a letdown ha ha.

Morra: What does that mean???

Crano: I don't know. You're probably going to get here and be like nope and turn around.

Crano: I don't know. You seem too hot to hang out with me.

Morra: Well, I'm telling you I'm down so that means I'm down lol. I don't play games.

Morra: Just text address. I'm leaving work in 15.

Crano: Okay, but like I'm worried. I don't want to get prego or any diseases. I'm not saying you got any but like you're kind of confusing me so just want to make sure we're on the same page lol.

Morra: Well, yeah, I don't have any diseases and I'm not going to get you prego lol. We'll take it slow. I'll let you play around with me for a little.

Crano: Oh, yeah??? How lol.

Morra: You'll see when we chill, cutie. So you want to send address or no lol.

Crano: 5*** Harvard Avenue.

Morra: Okay. About to leave work.

Crano: Okay, cool.

Crano: Okay, but seriously, how do I know you're not going to get me prego?

Morra: I'll wear a condom, don't worry lol.

Crano: Okay, but I don't have any of those.

Morra: I can get some.

Crano: Okay, cool.

Morra: So are you going to be with anyone?

Crano: No. Nobody's going to be home until after 10.

Crano: What time do you think you're going to be around here?

Morra: Okay, cool. I'll be there in 30 minutes.

Morra: Are you going to be outside when I get close?

Crano: Okay, cool. Let me know when you're close. I'm going to take a shower.

Crano: No, I'm going to be in the A/C because it's hot asf out, ha ha.

Morra: Okay lol. I'll be there soon, but for real go outside when I get there.

Crano: What kind of car you going to be in?

Morra: It's a gray truck.

Morra: Call me.

Crano: One sec.

Morra: Can you hear me?

Crano: I'm trying to. I think you tried to call me at the same time.

Crano: Can you try and call me?

Crano: I was going to take a shower so I'm not sweaty asf, but I don't want to miss your call if you try again.

Morra: I can hear you, but it's cool. I'll be there in 25 minutes.

Crano: Okay, cool.

Crano: I don't know why I can't hear you, though.

Morra: Yeah, I don't know. That's weird lol.

Crano: My phone is old asf.

Morra: Lol. Damn. What kind of phone?

Crano: Old Galaxy.

Crano: I think.

Morra: Ha ha. It's all good.

Morra: Where should I park?

Crano: Right in front of my house is good.

Crano: But that's the dollar store. I want you to pick me up a Mountain Dew Code Red because I'm thirsty ha ha.

Morra: Ahhh, let's go together lol.

Morra: So what's your address then?

Crano: I'm not allowed in there anymore.

Crano: Long story.

Morra: It's cool. Just wait in the car while I go in lol.

Crano: I'm a few houses down. Just let me know when you're there.

Crano: My address is 3*** East 54th.

Crano: It's apartment 1.

Crano: Just come it.

Morra: Okay. I want to see you outside before I come in, though.

Morra: I'm not walking into a random house.

Crano: Just come up to the door then and I'll let you in.

Morra: Okay.

Morra: 10 minutes away.

Crano: Okay.

Morra: I'm here. Come outside. I'm rolling one up.

Morra: Come out.

Crano: One sec, I'm getting dressed.

Morra: Okay. Just come to my truck when you're done.

{¶ 13} Crano testified as follows as to what occurred after Morra arrived at the location:

So [Morra] had pulled up to the residence and had not exited his vehicle. Through the text messages he had said he wanted the child to come out so he could see her. He then moved his vehicle around the corner and parked on the other side of the street but he still did not exit his vehicle. His vehicle was still running. So at that point they decided

to call in a takedown vehicle because he was not exiting his vehicle at that time.

* * * [Morra] drove his car away from the area towards the dead end street — the dead end portion of the street. There are several concrete barriers that block access on that road. * * * Not until you make that final turn do you see the concrete barriers. * * * So everyone is wearing bulletproof vests. * * * They identify themselves as police officers.

* * *

[Morra] was brought into the residence from that rear entrance. He was brought to the interview portion where he was searched to make sure he didn't have any weapons on him, any evidence pertaining to this case would have been taken from him, where we got basic information as to who he is, date of birth, Social Security number, where he lives. Then he was subsequently interviewed.

{¶ 14} The police collected the following evidence from Morra: A gray 2004 Chevy Silverado pickup truck, an Apple iPhone, and a wallet with Morra's driver's license, credit cards, and \$253.67 cash.

{¶ 15} Jean-Philippe Rigaud ("Rigaud") testified that he is a special agent with the Ohio Attorney General's Office Bureau of Criminal Investigation ("BCI"). He has been working in the Crimes Against Children Unit since 2012. BCI was working with OICAC on the undercover sting operation at issue in this case, and Rigaud, along with special agent John Saraya, conducted the interview of Morra after Morra's arrest. The interview was videotaped and this video was played for the court.

{¶ 16} According to Rigaud, Morra understood that he was apprehended in connection with "a 14-year-old." He admitted to asking her for nude photographs of herself, but stated that he "[t]hought maybe he hung out with her before." He also

told the officers that he deleted portions of his text conversation with the 14-year-old from his cell phone.

{¶ 17} Jason Howell (“Howell”) works for OICAC in “digital forensics and investigation of peer-to-peer file sharing.” Relating to this case, Howell extracted or recovered information from Morra’s iPhone and analyzed that data. Howell was stationed in a mobile investigation vehicle, which allowed him “to do on-scene forensic triage examinations.” Howell’s analysis of the data recovered from Morra’s cell phone included: “two images of the victim and some chats on the Textfree application, one in general related to this case, and then there was a lot of information on the device of marijuana and the sale of pills like Adderall.”

{¶ 18} According to the record, these extracted text messages matched the messages about which Crano testified. Howell further testified that Morra made three calls to the victim’s cell phone and he received one call from her cell phone on May 29, 2018.

{¶ 19} Morra testified in his own defense. Morra is 22 years old, although his dating app profile at issue in this case listed his age as 24. Morra testified that he downloaded an app called TextFree, which assigns you a different phone number that you can text from using your cell phone. He used this second phone number to text “Kailee” on the day in question. Asked why he downloaded this app, Morra explained:

Just so I didn’t get it mixed up with business phone calls. I didn’t really want my girlfriend to find any messages or anything, either, too so it was an easy way to just delete the app at the end of the day, redownload

it another day. * * * Basically, when I wasn't with my girlfriend I would download it, use it while I'm working or whenever I had a chance, and delete it.

{¶ 20} Morra testified that on May 29, 2018, he “was talking to a lot of people” via various dating apps on his phone. Morra estimated that he texted with “10, maybe 20” women that day. He received a message from “Kailee” and identified in court the pictures associated with her profile. Kailee’s profile stated that she was born in 1980. Morra testified that, until Kailee texted that she was 14-years-old, he believed her to be 38. Morra deleted the text that stated Kailee was 14-years-old. Asked why, Morra testified as follows: “Because I wasn’t really into that. She’s 14. She said she was 14.”

{¶ 21} Morra testified that he asked Kailee to “send some pics,” because he was texting with multiple females and wanted to “see who it was really because I didn’t realize who I was talking to at the time.” Kailee sent two photographs to Morra’s phone number. Morra replied, “Yes lol, you’re too young. Damn.” Morra explained this text: “Like I realized it was the girl that just said that she was 14 and then the pictures, you know, she’s too young. I realized it was the same girl, so just letting her know again.” Morra deleted this series of texts that referenced the age of 14. However, the two continued texting ultimately arranging for Morra to drive to Newburgh Heights so they could “chill.” Morra testified that “chill” meant “Just like hang out, you know. Do stuff like * * * get food. * * * Get to know each other.”

{¶ 22} Morra explained why he asked Kailee if she was trying to f**k:

Well, the reason I said that is because she kept asking me multiple times what chill meant, and I told her multiple times what it meant. And I said this basically asking her if that's what she's saying. I'm taking the words out of her mouth and asking her if this is what she's been trying to say when she says chill because that's what it seemed like.

{¶ 23} Asked if he had any idea who he was texting with, Morra answered, "No." Asked if by "chill" he mean sex, Morra answered, "No." At one point, Morra texted, "Yeah, I don't have any diseases and I'm not going to get you prego lol. We'll take it slow. I'll let you play around with me for a little." Morra testified that his text meant the following: "That was just, you know, you can ask me questions, just get to know each other first and see where things go."

{¶ 24} Asked why he wanted Kailee to come outside of the house when he arrived, Morra testified as follows:

Because I still don't know who this person is and I want to see somebody at least, you know, that it's not going to be somebody that's a bigger woman or guy. I just didn't want to walk in and get robbed. I wanted to physically see someone. * * * Because I have went and there have been times where it's just the person's not who they say they are or I've heard stories of people getting robbed during these situations.

{¶ 25} Morra testified that he did not know the person he was going to meet was a 14-year-old. "Because that's not who I am. I mean, that's a 14-year-old. You know, that's just not anything that I would ever even get involved with. That's just not the person that I am. I mean, there's not too much that — I don't know how to explain this. You know, this is all weird to be because this is not something that I would ever do."

{¶ 26} Morra insisted that he did not know which female he was texting with.

Q: Okay. Now. Do you know who you're talking to at this point?

A: No.

Q: Is this common you're talking to somebody and you're just not quite sure who it is?

A: Yes. I was just going along with it, you know. Eventually I assumed that I would figure out who it was going to be, like assuming it was somebody I talked to already.

Q: How many women were you talking to at this time, do you recall?

A: At this time like three, or four, five somewhere around that number.

Q: Is it common that they will text you every few minutes or immediately afterward?

A: Yes.

Q: Is it safe to say that you just jump around to different numbers?

A: Yes.

{¶ 27} Asked why he requested that Kailee send him nude pictures of herself,

Morra testified as follows:

Well, I was just trying to see who it was at this point, just trying to get some kind of picture without asking for a name, you know, and trying not to insult her. I thought I knew her. I could have known her. May have hung out before. I really didn't know, so I figured a picture would be — I would know. * * * Just because I didn't know who it was that I was talking to. I just wanted a picture to see and make sure that it was a real person at this point.

{¶ 28} Based on this evidence, the court convicted Morra of importuning and possession of criminal tools. The court stated the following prior to sentencing Morra: "My goal was to make sure something like this never happens again. * * * I

just did not find, based on what you said on the videotape and the close proximity of all these messages to each other, that you were really under the belief that you weren't dealing with a person that told you that they were underage, that they were 14 years old."

Analysis

{¶ 29} The crime of importuning is defined by R.C. 2907.07, and Morra was convicted of subsection (D)(2), which states as follows:

No person shall solicit another by means of a telecommunications device * * * to engage in sexual activity with the offender when the offender is eighteen years of age or older and * * * [t]he other person is a law enforcement officer posing as a person who is thirteen years of age or older but less than sixteen years of age, the offender believes that the other person is thirteen years of age or older but less than sixteen years of age or is reckless in that regard, and the offender is four or more years older than the age the law enforcement officer assumes in posing as the person who is thirteen years of age or older but less than sixteen years of age.

{¶ 30} Morra was also convicted of possessing criminal tools, i.e., his cell phone, in violation of R.C. 2923.24(A), which states: "No person shall possess or have under the person's control any substance, device, instrument, or article, with purpose to use it criminally."

{¶ 31} Upon review, we find that Morra's convictions are supported by the weight of the evidence in the record. The text messages, which were sent from Morra's cell phone, speak for themselves, and Crano told Morra she was 14 and sent pictures of what appeared to be a teenaged girl. Morra acknowledged that "Kailee" was "too young" but arranged to meet with her for sex anyway. The court noted that

it did not find Morra's testimony that he was unaware of which female he was texting with credible. We cannot say that the court lost its way and created a miscarriage of justice. Accordingly, Morra's sole assigned error is overruled.

{¶ 32} 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 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.

PATRICIA ANN BLACKMON, JUDGE

SEAN C. GALLAGHER, P.J., and
FRANK D. CELEBREZZE, JR., J., CONCUR