

**IN THE COURT OF APPEALS OF OHIO
SECOND APPELLATE DISTRICT
GREENE COUNTY**

STATE OF OHIO	:	
	:	Appellate Case No. 2009-CA-43
Plaintiff-Appellee	:	
	:	Trial Court Case No. 08-CR-440
v.	:	
	:	(Criminal Appeal from
MICHAEL R. WIFORD	:	Common Pleas Court)
	:	
Defendant-Appellant	:	

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O P I N I O N

Rendered on the 21st day of May, 2010.

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STEPHEN K. HALLER, Atty. Reg. #0009172, by STEPHANIE R. HAYDEN, Atty. Reg. 0009172, Greene County Prosecutor's Office, 61 Greene Street, Xenia, Ohio 45385
Attorneys for Plaintiff-Appellee

THOMAS A. HANSEN, Atty. Reg. #0016152, 130 West Second Street, Suite 1900, Dayton, Ohio 45402
Attorney for Defendant-Appellant

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BROGAN, J.

{¶ 1} Michael Wiford appeals from his conviction of importuning and attempted sexual conduct with a minor. Wiford entered no-contest pleas to both charges after the trial court overruled his suppression motion. In a single assignment of error, Wiford contends the trial court erred in denying the pretrial

motion.

{¶ 2} The facts underlying this appeal are not seriously disputed, the legal ramifications are.

{¶ 3} In early April 2008, Fairborn Police Detective Lee Cyr began communicating online with an unknown individual using the screen name Ohiostud4U. Detective Cyr posed as a 15-year-old female by utilizing an electronic voice transformer that made his voice sound like a 15-year-old female. Cyr communicated with Ohiostud4U, later identified as Wiford, for nearly two months. In chat conversations, Wiford solicited sex from Cyr's undercover profile and set up a meeting for that purpose. (Tr. 7.) During the online chats, Wiford identified himself as "Mike" and stated he was 22 years old. He also sent a picture of his face in "photo-sharing" and it revealed he was a white male.

{¶ 4} Initially, Cyr and Wiford arranged to meet on June 3, 2008 at 2:00 p.m. at the BP station on East Yellow-Springs Road in Fairborn. The plan was they would drive back to the profiler's residence for sexual activity. The meeting was scuttled when police converged on the gasoline station to effect the arrest of a motorcyclist.

{¶ 5} Later that afternoon, Cyr made on-line contact with Wiford who indicated he had seen the police at the station and became scared and left the scene. Cyr told Wiford he lived in the area of the gas station in a house on Valle Greene Drive. Wiford told Cyr he was familiar with that location and he would get there and then call so they could meet. At this time, Cyr and Wiford were communicating by phone. So Cyr could continue to speak to Wiford by phone with

use of the voice transformer, Cyr enlisted Captain Doctor Plemmons to take an unmarked vehicle to the meeting place. The unmarked vehicle was a white pickup truck. Wiford called Cyr and told him he was driving on Valle Greene Drive in a tan Chevrolet S-10 truck. Wiford told Cyr “there’s a white pickup truck that is passing me right now.” Cyr then asked Plemmons over the air whether he was passing a truck and Plemmons replied that he was. Plemmons said his and Wiford’s were the only two vehicles on the road, and when he passed Wiford’s vehicle, Wiford was speaking on his cell phone to Detective Cyr. (Tr. 13.)

{¶ 6} Apparently Wiford had second thoughts and began following Captain Plemmons’ truck. When Plemmons pulled his truck into the B.P. station, Wiford continued onto Yellow-Springs Road and onto I-675 where he was stopped by Plemmons and Sergeant Mark Stannard. Plemmons asked Wiford what he was doing in the area of Valle Greene Drive and Wiford stated he was visiting his cousin. Plemmons asked Wiford if he had a cell phone and Wiford said he did and picked it up on the front seat next to him. Sergeant Stannard reached in the vehicle, grabbed the phone, and arrested Wiford.

{¶ 7} At the police station, Detective Cyr interviewed Wiford after obtaining a *Miranda* waiver. Wiford admitted being OhioStud4U on the internet. Cyr examined Wiford’s cell phone and his undercover phone number appeared on Wiford’s outgoing calls several times on June 3, 2008.

{¶ 8} Wiford contends that Sergeant Stannard lacked probable cause to arrest him and therefore his admissions to Detective Cyr and the evidence found on his cell phone should be suppressed. Wiford notes that Detective Cyr admitted he

did not ascertain from the internet server who was using the Ohiodstud4U name and he did not subpoena any phone records. Wiford argues that all the information the police had about Ohiodstud4U was that he most likely was a white male, possibly 22 years of age, driving a pick-up truck and that was insufficient grounds to arrest him.

{¶ 9} The State, for its part, argues there was clearly sufficient probable cause for the arrest of Wiford on the charges for which he was indicted. The State notes that Wiford came to the rendezvous location where he expected to meet his 15-year-old prey. The State notes that Detective Cyr was relaying identifying information about his suspect, Wiford, as Captain Plemmons' was observing Wiford in his Chevy S-10 truck actually talking on his cell phone to Detective Cyr.

{¶ 10} In *Draper v. United States*, 358 U.S. 307, 333 (1959), the Supreme Court defined probable cause in the following way:

{¶ 11} “ ‘In dealing with probable cause, * * as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.’ *Brinegar v. United States*, supra, 338 U.S. at page 175, 69 S.Ct. at page 1310. Probable cause exists where ‘the facts and circumstances within their [the arresting officers’] knowledge and of which they had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief that’ an offense has been or is being committed. *Carroll v. United States*, 267 U.S. 132, 162, 45 S.Ct. 280, 288.”

{¶ 12} We agree with the State that Sergeant Stannard and Captain Plemmons had ample probable cause to arrest Wiford. An officer effecting an arrest

of an individual may properly rely upon information relayed by fellow officers in making a probable cause determination to arrest without a warrant. *State v. Fultz* (1968), 13 Ohio St.2d 79.

{¶ 13} Detective Cyr communicated for weeks with Wiford on the internet and learned that he was a white male named Mike, age 22. Wiford came to the rendezvous location in the vehicle he described for Detective Cyr. He told Cyr he could see the white pickup Captain Plemmons was driving and Plemmons saw Wiford's vehicle with a young white male speaking on the cell phone to Detective Cyr. When he was arrested, Wiford confirmed his age as 22 years and he was in possession of a cell phone. The facts that the police were aware of were sufficient to justify their belief that Wiford was probably Ohio Stud 4U. Therefore, his arrest by them was lawful. The appellant's assignment of error is Overruled. Judgment affirmed.

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DONOVAN, P.J., and FAIN, J., concur.

Copies mailed to:

Stephen K. Haller
Stephanie R. Hayden
Thomas A. Hansen
Hon. Stephen Wolaver