IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT NASHVILLE

OCTOBER 1999 SESSION

FILED

January 7, 2000

Cecil Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,	)	C.C.A. No. 01C01-9810-CC-00435
	)	No.M1998-00547-CCA-R3-CD
Appellee,	)	Bedford County
	)	
vs.	)	Hon. William Charles Lee, Judge
	)	
RONNIE LANCE COLEMAN,	)	(Solicitation to Commit Child Rape)
	)	
Appellant.	)	
	)	

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OPINION FILED:_____

REVERSED AND DISMISSED

JAMES CURWOOD WITT, JR., JUDGE

OPINION

The defendant, Ronnie Lance Coleman, appeals his Bedford County Criminal Court conviction. A jury convicted the defendant of solicitation to commit rape of a child, a Class E felony. After a sentencing hearing, the trial court sentenced the defendant to one year, six months confinement in the Tennessee Department of Correction and six years probation. In this appeal the defendant raises the issue of whether the evidence was sufficient to support the conviction. After hearing oral arguments and following a review of the record, the briefs of the parties, and the applicable law, we reverse and dismiss the charge of solicitation to commit rape of a child.

In a case of first impression before this court, the defendant asks whether the solicitation statute prohibits the solicitation of the victim of the ultimate crime. See Tenn. Code Ann. § 39-12-102 (1997). We conclude that a plain reading of the statute prevents conviction under the facts of this case. This result is supported by legislative intent as indicated by the recently enacted statute which created the Class E felony of solicitation of a minor for a sex crime. See Tenn. Code Ann. § 39-13-528 (Supp. 1998).

At trial, Detective David Adams of the Bedford County Sheriff's Department testified that he used the Internet to initiate contact with the defendant. He placed an advertisement in the classified section of Hot Mail, an Internet e-mail service. Essentially, the advertisement stated that the detective, who identified himself in the advertisement as Skeeter, was twelve years old and was seeking help understanding his feelings towards others of the same sex.

The defendant responded to the advertisement. He wrote that he was a gay man and offered to answer any questions that Skeeter had. Skeeter accepted the defendant's offer. Skeeter's e-mail described his feelings toward other men and stated that although he liked girls, he preferred to be around other boys and men. Less than four hours later the defendant responded by e-mail. The defendant told Skeeter that he had similar feelings when he was Skeeter's

age. He also wrote, "I was wondering if you could meet me sometime. . . . I can tell you alot [sic] about yourself."

The e-mail correspondence continued for several weeks. In one e-mail, Skeeter asked the defendant what the defendant would teach and show him if they were to meet. The defendant responded, "Yes[,] I would like to meet you. I would let you touch me any where [sic] you wanted to. You could rub my bottom, or touch my front and make me feel good." In another e-mail, the defendant wrote, "[H]ey[,] if I do come to see you, you can't tell anyone that I met you or that you know me, is that ok. You see[,] you are still under age and there is a law that says we can't meet. But I want to meet you and teach you what I know. We just can't let anyone find out."

In subsequent e-mails the two made plans for the defendant to drive to Shelbyville and meet Skeeter at a motel, where they would spend the night. The defendant claimed he was broke and needed money for the trip. Skeeter promised to give the defendant all the cash he had on hand. The first planned meeting never occurred because the defendant's car broke down. A second meeting was planned for the following Friday. The plan was for the defendant to drive to the motel, pull into the parking lot and honk his horn twice. Skeeter would run out, get into the car, and give his money to the defendant, who would then rent a room for the night.

Expecting to meet Skeeter, the defendant drove to Shelbyville on January 30, 1998 as planned. He entered the motel parking lot and honked his horn. When Skeeter did not appear, he drove off. He was arrested on an adjacent street. The e-mailed directions to the motel and a pornographic magazine were in the car. Also, the police found various juvenile toys in the trunk. On this evidence the defendant was convicted of solicitation to commit rape of a child.

The only issue presented on appeal is whether the evidence of solicitation of the victim is sufficient to sustain the defendant's conviction. In the case at bar, the crime solicited is rape of a child and the person solicited was the child victim, who could not be guilty of the rape.

When an accused challenges the sufficiency of the evidence, an appellate court's standard of review is whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Jackson v. Virginia, 443 U.S. 307, 324, 99 S. Ct. 2781, 2791-92 (1979); State v. Duncan, 698 S.W.2d 63, 67 (Tenn. 1985); Tenn. R. App. P. 13(e). This rule applies to findings of guilt based upon direct evidence, circumstantial evidence, or a combination of direct and circumstantial evidence. State v. Dykes, 803 S.W.2d 250, 253 (Tenn. Crim. App. 1990).

In determining the sufficiency of the evidence, this court should not reweigh or reevaluate the evidence. State v. Matthews, 805 S.W.2d 776, 779 (Tenn. Crim. App. 1990). Questions concerning the credibility of the witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact. State v. Cabbage, 571 S.W.2d 832, 835 (Tenn. 1978). Nor may this court substitute its inferences for those drawn by the trier of fact from the evidence. Liakas v. State, 199 Tenn. 298, 305, 286 S.W.2d 856, 859 (1956); Farmer v. State, 574 S.W.2d 49, 51 (Tenn. Crim. App. 1978). On the contrary, this court must afford the State of Tennessee the strongest legitimate view of the evidence contained in the record as well as all reasonable and legitimate inferences which may be drawn from the evidence. Cabbage, 571 S.W.2d at 835.

In pertinent part, the statute that the defendant was convicted of violating provides

> (a) Whoever, by means of oral, written or electronic communication, directly or through another, *intentionally commands, requests or hires another to commit a criminal offense*, or attempts to command,

> request or hire another to commit a criminal offense, with the intent that the criminal offense be committed, is guilty of the offense of solicitation.

Tenn. Code Ann. § 39-12-102 (1997) (emphasis added).

The question which arises is whether one who "intentionally commands, requests or hires another to commit a criminal offense" can be guilty of solicitation when the solicitor is committing the criminal offense, not the other person, who is the victim, or in other words, whether solicitation occurs under section 39-12-102 when the person solicited is the victim of the criminal offense sought to be committed.

Tennessee law provides the following principles to aid in interpretation of statutes. Penal statutes are to be construed giving fair import of their terms in a way which promotes justice and effects the objectives of the criminal code. Tenn. Code Ann. § 39-11-104 (1997). The duty of the courts is to give effect to legislative intent while refraining from restricting or expanding a statute's scope beyond that which was intended. See, e.g., State v. Sliger, 846 S.W.2d 262, 263 (Tenn.1993). In so doing, the courts "must examine the language of a statute and, if unambiguous, apply its ordinary and plain meaning." Parks v. Tennessee Mun. League Risk Management Pool, 974 S.W.2d 677, 679 (Tenn. 1998) (citation omitted). If, on the other hand, the language is ambiguous, the courts must resort to examination of the statutory scheme as a whole and the legislative history in order to determine the meaning. Id. In construing ambiguous statutes, "courts must presume that the Legislature has knowledge of its prior enactments and knows the state of the law at the time it passes legislation." Owens v. State, 908 S.W.2d 923, 926 (Tenn. 1995) (citing Wilson v. Johnson County, 879 S.W.2d 807, 810 (Tenn. 1994)).

With these principles in mind, we hold that the language "[w]hoever . . . intentionally commands, requests or hires another to commit a criminal offense" in the description of the criminal offense is unambiguous. The crime of solicitation contemplates that "another" is to commit the requested crime, not the

solicitor. Asking someone to participate in conduct that is a crime for only the solicitor is not prohibited by section 39-12-102.

We note that the Legislative history bears out this interpretation. In 1998, the Tennessee Legislature enacted a bill making solicitation of a person under 18 years of age a Class E felony. The codified bill provides, in pertinent part,

> (a) It is an offense for a person eighteen (18) years of age or older, by means of oral, written or electronic communication, directly or through another, to intentionally command, request or hire a person who the person making the solicitation knows or should know is less than eighteen (18) years of age to engage in conduct that if completed would constitute a violation by the soliciting adult of one (1) or more of the following offenses:
>
> (1) Rape of a child pursuant to § 39-13-522;
>
> (2) Aggravated rape pursuant to § 39-13-502;
>
> (3) Rape pursuant to § 39-13-503;
>
> (4) Aggravated sexual battery pursuant to § 39-13-504;
>
> (5) Sexual battery pursuant to § 39-13-505;
>
> (6) Statutory rape pursuant to § 39-13-506; and
>
> (7) Especially aggravated sexual exploitation of a minor pursuant to § 39-17-1005.

Tenn. Code Ann. § 39-13-528 (Supp. 1998).

This statute was not effective until July 1, 1998, approximately six (6) months after defendant's conduct.

During consideration of the defendant's motion for judgment of acquittal, the defendant offered as evidence a tape containing the legislative history of the House bill. The representative who sponsored the bill in the House stated to the House Judiciary Committee that the bill was meant to plug a hole in the current solicitation statute. Clearly, the legislative purpose of the bill was to criminalize conduct which was not at that time prohibited.

Because the defendant's conduct, even though deplorable, was not the criminal act of solicitation at the time it was committed, the defendant's conviction cannot stand. Accordingly, the defendant's conviction is reversed, and the case is dismissed.

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JAMES CURWOOD WITT, JR., JUDGE

CONCUR:

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JOE G. RILEY, JUDGE

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THOMAS T. WOODALL, JUDGE