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ATTORNEY FOR APPELLANT:

HENRY Y. DEIN
Indianapolis, Indiana

ATTORNEYS FOR APPELLEE:

GREGORY F. ZOELLER
Attorney General of Indiana

ZACHARY J. STOCK
Deputy Attorney General
Indianapolis, Indiana

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IN THE
COURT OF APPEALS OF INDIANA

KEVIN CHRISMAN,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-0812-CR-1156
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION COUNTY SUPERIOR COURT
The Honorable Patricia Gifford, Judge
Cause No. 49G04-0802-FC-43836

August 14, 2009

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Kevin Chrisman appeals his conviction for child solicitation, a class C felony.[1]

We affirm.

ISSUES

1. Whether there is sufficient evidence to support Chrisman's conviction for child solicitation.

2. Whether venue was proper in Marion County.

FACTS

In October of 2007, Detective Darin Odier of the Marion County Sheriff's Department conducted an investigation of online child solicitation, during which he created a *Yahoo!* profile under the username "volleygirl1234" ("VolleyGirl"). (Tr. 82). The profile for VolleyGirl included three pictures of what appeared to be a young girl accompanied by a description indicating that the user was a fifteen-year-old from Indianapolis named Jamie.

On October 15, 2007, Chrisman logged into an Indiana regional chat-room on the *Yahoo!* website under the username "hotrod567us2000." (Tr. 84). While in the chat-room, Chrisman initiated communication with VolleyGirl and an online conversation followed. During the conversation, Chrisman asked VolleyGirl her age and location, and Odier responded that he was a fifteen-year-old girl from Indianapolis. Following a series of explicit questions related to dating and sexual experience, Chrisman expressed his

[1] Ind. Code § 35-42-4-6(c).

desire to have both oral and vaginal sex with VolleyGirl. Chrisman repeatedly proposed that the two meet, and he offered to give her a ride.

On February 20, 2008, police officers searched Chrisman's home, seized his home computer and recovered the conversations between him and VolleyGirl. During a voluntary statement, Chrisman admitted to chatting online with VolleyGirl and viewing her online photographs. He claimed to believe that the chat-room was intended for persons eighteen years or older, but he also admitted to knowing that VolleyGirl was "14 or 15, I think." (Ex. 11, p. 155). On February 21, 2008, the State charged Chrisman with child solicitation, a class C felony.

On November 19, 2008, the trial court found Chrisman guilty of child solicitation. The court sentenced him to eight years with a four-year habitual offender enhancement.

DECISION

I. Sufficiency of the Evidence

Chrisman contends that the State failed to provide sufficient evidence to overcome his abandonment defense and prove that he committed child solicitation. We disagree.

When reviewing the sufficiency of evidence to support a conviction, we will consider only the probative evidence and the reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We will neither assess witness credibility nor reweigh the evidence. *Id*. We will defer to the trial court's findings of fact, and we will affirm unless "no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt." *Id.*

Indiana Code section 35-42-4-6 provides that it is a crime for a person over the age of eighteen to solicit a person he "believes to be a child of at least fourteen but less than sixteen years of age" to engage in "sexual intercourse; … deviate sexual conduct; or … any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person." The offense is a class C felony when the solicitation is made using a computer network. Ind. Code § 35-42-4-6(c).

On appeal, Chrisman challenges the State's proof that he committed child solicitation. He emphasizes his stated belief about an age restriction on the *Yahoo!* chat-room to support his contention that he did not believe VolleyGirl was fifteen years old. However, by asking us to reevaluate what he believed, Chrisman is requesting that we reweigh evidence, which we will not do. The State provided sufficient evidence – including statements Chrisman made during a recorded police interview – to show Chrisman's knowledge of the user's age, and we cannot say that no reasonable fact-finder would conclude that Chrisman believed he was soliciting a fifteen-year-old girl. Therefore, we find that the State met its burden of proof regarding Chrisman's belief about the age of his victim.

Chrisman further claims that his lack of intent to "consummate" the conversation amounts to an abandonment of the crime. Chrisman's Br. at 5. This argument immediately fails because the crime of child solicitation is not one to which the defense of abandonment is available. Indiana Code section 35-41-3-10 specifies aiding, inducing,

or causing an offense;[2] attempt;[3] and conspiracy[4] as the three crimes for which an abandonment defense may be asserted. Since child solicitation is not one of the crimes listed in the abandonment statute, that defense is not available to Chrisman.

Even if the defense of abandonment were extended to crimes not specifically listed in Indiana Code section 35-41-3-10, Chrisman's argument would still fail. Chrisman claims that because he did not pursue a meeting with VolleyGirl his effort was abandoned; however, his claim is unavailing because the crime of solicitation does not require the performance of a sexual act. "The crime of child solicitation is completed at the time of the utterance. The urging to perform the act – rather than the performance of the urged act – constitutes child solicitation." *LaRose v. State*, 820 N.E.2d 727, 732 (Ind. Ct. App. 2005). Therefore, Chrisman has no defense of abandonment, and his argument must fail.

Chrisman's invocation of the voluntary conduct statute, Indiana Code section 35-45-2-1(a), is equally unavailing. Our Supreme Court has defined voluntary conduct as "an 'act of choice' by a person in a 'conscious state of mind.'" *McClain v. State*, 678 N.E.2d 104, 107 (Ind. 1997). (quoting Ind. Crim. Law Study Comm'n, *Indiana Penal Code Proposed Final Draft* 11 (1974)). On appeal, Chrisman does not claim that he lacked the ability to make a conscious choice. Instead, Chrisman claims that he was "enticed" and therefore required time to "abandon" the conversation. Chrisman's Br. at

[2] I.C. § 35-41-2-4.
[3] I.C. § 35-41-5-1.
[4] I.C. § 35-41-5-2.

5. Chrisman cannot benefit from an abandonment defense, so his repeated claim that he never intended to meet his victim is again irrelevant. Since Chrisman was neither under threat nor in a state of unconsciousness, the voluntary conduct statute is inapplicable here.

II. Venue

Chrisman also argues that the venue of Marion County was improper because he acted while within Warren County, and the alleged victim in Marion County did not actually exist. In factually similar circumstances, however, we have found that venue is proper in the county in which solicitations are received even when the alleged victim is an undercover officer. *Laughner v. State*, 769 N.E.2d 1147 (Ind. Ct. App. 2002), *trans. denied, but overruled on other grounds by Fajardo v. State*, 859 N.E.2d 1201, 1206, n.9 (Ind. 2007). In determining whether venue is proper, we consider "whether the defendant took any 'action directed at' the second county." *Id.* (quoting *Wurster v. State*, 715 N.E.2d 341, 350 (Ind. 1999)). Since VolleyGirl identified herself as an Indianapolis resident at the beginning of the online chat, and Chrisman directed all subsequent statements to Marion County, venue there was proper.

Furthermore, the United States Court of Appeals for the Seventh Circuit has held that venue is proper where an overt act is intended to have an effect in the district where the case is brought. *U.S. v. Ringer*, 300 F.3d 788, 791 (7th Cir. 2002) (citing *U.S. v. Frederick*, 835 F.2d 1211, 1215 (7th Cir. 1987)). By directing his statements to VolleyGirl after learning that the user was in Indianapolis, Chrisman intended for his

actions to have an effect in Marion County. Therefore, we find that venue in Marion County was proper.

Affirmed.

BAILEY, J., and ROBB, J., concur.