ORIGINAL

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

THE STATE,

RESPONDENT,

V.

CHARLES M. HARRIS,

APPELLANT

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

Opinion No. 2014-UP-160

APPELLATE CASE NO. 2012-212797

PETITION FOR REHEARING

Petitioner requests rehearing pursuant to Rule 221(a), SCACR because this Court may have overlooked the fact that its opinion imposes a strict liability standard to any defendant charged with criminal solicitation if he discusses the possibility of having sexual relations with a person he believed to be under the age of eighteen even for a "fleeting moment." See Brief of Appellant at 9-10. Appellant would therefore be punished for his thoughts, and not his actions. That is anathema to our criminal system of justice.

A defendant, here appellant, could have also quickly abandoned any plan to have sexual relations with the fictitious minor even if he very briefly discussed the possibility of having sex with that fictitious minor.

Appellant understands that this Court is bound by State v. Gaines, 380 S.C. 23, 667 S.E.2d 728 (2008) wherein the Supreme Court held that no overt act needs to be done in furtherance of the charge of criminal solicitation of a minor. Although that holding should respectfully be revisited by the Supreme Court a directed verdict nonetheless should have been granted under the highly unusual facts of this case.

Officer Bowling, the fictitious minor, admitted appellant never showed up at the scene and there was no evidence he "traveled." R. 8-35. Again, as argued above, if appellant ever had the fleeting intention to solicit sex with a minor as envisioned under the statute, he abandoned it seemingly without leaving his computer screen. A fundamental tenant of our criminal justice system has been that we do not punish people for their thoughts. We only punish people for their evil deeds.

Here, unlike State v. Green, 397 S.C. 268, 724 S.E.2d 664 (2012) and State v. Reid, 393 S.C. 325, 713 S.E.2d 274 (2011) appellant was not caught "red-handed." (Appellant understands the distinction in the crime of attempted criminal sexual conduct with a minor). Appellant offered the explanation, which came out during the state's case-in-chief, that he was trying to teach the young woman on the other side of the chat room "a lesson." While appellant's actions in this regard may have been unusual they were not criminal.

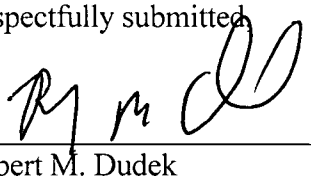
The state simply did not provide the requisite direct or substantial circumstantial evidence to

show appellant reasonably knew he was attempting to entice someone he believed to be thirteen-year-old (under eighteen) to have sex with him and that he had the criminal intent to commit that crime. A directed verdict should have been issued. See State v. Mitchell, 341 S.C. 406, 409, 535 S.C. 126, 127 (2000); State v. Schrock, 283 S.C. 129, 322 S.E.2d 450 (1984).

Otherwise criminal solicitation is simply a strict liability offense, and a person can be punished for his thoughts and not his actions, and he can never take back even the momentary consent to have sex with the fictitious minor. Further, public policy favors allowing people to abandon even agreed-upon criminal conduct. Notice of abandonment or withdrawal is only necessary in limited instances such as a conspiracy. This case was decided without oral argument, and appellant respectfully requests rehearing on this significant issue.

This Court should respectfully grant rehearing.

Respectfully submitted,



Robert M. Dudek
Chief Appellate Defender

This 17th day of April, 2014.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Oconee County

Alexander S. Macaulay, Circuit Court Judge

RECEIVED

APR 17 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

CHARLES M. HARRIS,

APPELLANT

APPELLATE CASE NO. 2012-212797

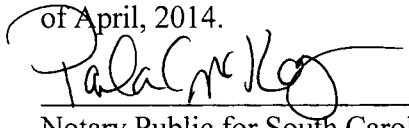
CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Petition for Rehearing in the above-entitled case has been served upon Deborah R.J. Shupe, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201 this 17th day of April, 2014.

Robert M. Dudek
Chief Appellate Defender

ATTORNEY FOR APPELLANT

SWORN TO BEFORE ME this 17th day of April, 2014.



(L.S.)
Notary Public for South Carolina

My Commission Expires: July 24, 2022.