

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED
JAN 03 2019
SC Court of Appeals

Appeal from Richland County
Honorable R. Knox McMahon, Circuit Court Judge
Appellate Case Tracking No. 2016-001831

The State,

Respondent,

vs.

Timothy Alan Oertel,

Appellant.

RETURN TO PETITION FOR REHEARING

On December 12, 2018, this Court correctly affirmed Appellant's conviction and sentence. Appellant contends this Court misapprehended or misapplied certain case law to the facts of this case. The State submits the Court properly analyzed each issue regarding the trial court's denial of a directed verdict and properly found evidence was submitted from which a reasonable juror could find guilt beyond a reasonable doubt. Accordingly, the Court should deny the Petition for Rehearing.

Attempted Dissemination of Obscene Material

Appellant contends the trial court should have granted his motion for a directed verdict because the State failed to present any evidence he attempted to disseminate the obscene material—nude pictures of himself and pictures of his penis—to a person he knew was under the age of eighteen. He maintains the case law cited by the Court is inapplicable because the person who received the material was law enforcement over eighteen and not a minor. However, the fact the person who ultimately received the material was law enforcement and not a minor is why

it is an attempted dissemination charge and not an actual dissemination charge. The State presented sufficient facts from which a jury could conclude Appellant “knowingly disseminate[d] to a person under the age of eighteen years material which he knows or reasonably should know to be obscene” in violation of section 16-15-345 of the South Carolina Code (Supp. 2016). Appellant seems to argue as long as he ultimately denies that he thought the recipient was under eighteen then the State cannot prove its case because it cannot establish he knew the recipient was eighteen at the time he sent the material. However, the State established through circumstantial evidence Appellant knew, at the time he sent the pictures, the recipient would be under eighteen. The State relies on its Final Brief of Respondent for any further discussion of the issue and case law relevant to this issue.

Criminal Solicitation of a Minor

Appellant contends the trial court should have granted his motion for a directed verdict again argues that because he said he did not reasonably believe the person receiving the material he sent would be under eighteen the State cannot prove its case regarding criminal solicitation of a minor. However, as discussed above and more fully in its Final Brief of Respondent, the State presented ample circumstantial evidence including Appellant’s chats with the minor and his own statement to indicate he knew at the time of his solicitation that he was communicating with a minor. Any further argument that because the individual was luckily a law enforcement agent and not a young girl is foreclosed by the statute itself, which provides: “It is not a defense to a prosecution pursuant to this section, on the basis of consent or otherwise, that the person reasonably believed to be under the age of eighteen is a law enforcement agent or officer acting in an official capacity.” S.C. Code Ann. § 16-15-342(D) (Supp. 2016). The State relies on its

Final Brief of Respondent for any further discussion of the issue and case law relevant to this issue.

Attempted Sexual Exploitation of a Minor

Appellant finally contends the State failed to present evidence he sought to produce material depicting Emmy in a state of sexually explicit nudity or for a live performance. The chat themselves belie this argument and the trial court properly denied Appellant's motion for a directed verdict. Appellant fails to demonstrate any points overlooked or misapprehended by the Court. For a full discussion of the issue the State relies on its Final Brief of Respondent.

The State asserts this Court completely and correctly addressed the issues and rehearing is not warranted. Accordingly, this Court should deny the Petition for Rehearing.

CONCLUSION

For all of the foregoing reasons, the State requests the panel deny the petition for rehearing.

Respectfully submitted,

ALAN WILSON
Attorney General

WILLIAM M. BLITCH, JR.
Assistant Attorney General

BY: 

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ATTORNEYS FOR RESPONDENT

January 3, 2019

STATE OF SOUTH CAROLINA
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Appeal from Richland County
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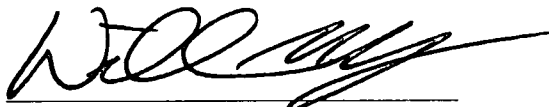
Appellant.

PROOF OF SERVICE

I, William M. Blitch, Jr., certify that I have served the within Return to Petition for Rehearing by depositing two copies of the same in the United States mail, postage prepaid, addressed to:

James W. Boyd, Esquire
Post Office Box 36425
Rock Hill, South Carolina 29732

I further certify that all parties required by Rule to be served have been served.
This 3rd day of January, 2019.



WILLIAM M. BLITCH, JR.
Office of Attorney General
Post Office Box 11549
Columbia, SC 29211
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ALAN WILSON
ATTORNEY GENERAL

January 3, 2019

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SC Court of Appeals

VIA HAND DELIVERY

The Honorable Jenny A. Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: State v. Timothy Alan Oertel
Appellate Case Tracking No. 2016-001831

Dear Ms. Kitchings:

Please find enclosed for filing the original and six (6) copies of the Return to Petition for Rehearing, with proof of service, in the above-referenced case.

Sincerely,

William M. Blich, Jr.
Assistant Attorney General
S.C. Bar No. 15608

Enclosures

cc: James W. Boyd, Esquire (2 copies enclosed)
Victim Advocacy Division (enclosure)