

ARKANSAS COURT OF APPEALS

DIVISION II

No. CACR 09-721

ELLIS TRICE

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JANUARY 6, 2010

APPEAL FROM THE CRAWFORD
COUNTY CIRCUIT COURT,
[NO. CR2008-312(II)]

HONORABLE MICHAEL MEDLOCK,
JUDGE

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Ellis Trice was convicted by a jury of computer child pornography and was sentenced to fifteen years in prison. For his sole argument on appeal, Mr. Trice argues that the trial court erred in denying his motion for directed verdict because there was insufficient evidence to support his conviction. We affirm.

Arkansas Code Annotated section 5-27-603(a)(2) (Repl. 2006) provides:

(a) A person commits computer child pornography if the person knowingly:

.....

(2) Utilizes a computer online service, internet service, or local bulletin board service to seduce, solicit, lure, or entice or attempt to seduce, solicit, lure, or entice a child or another individual believed by the person to be a child, to engage in sexually explicit conduct.

Directed-verdict motions are treated as challenges to the sufficiency of the evidence.

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Saulsberry v. State, 81 Ark. App. 419, 102 S.W.3d 907 (2003). The test for determining sufficiency of the evidence is whether the verdict is supported by substantial evidence, direct or circumstantial. *Smith v. State*, 352 Ark. 92, 98 S.W.3d 433 (2003). Substantial evidence is evidence forceful enough to compel a conclusion one way or the other beyond suspicion or conjecture. *Id.* We view the evidence in the light most favorable to the State, considering only the evidence that supports the verdict. *Clements v. State*, 80 Ark. App. 137, 91 S.W.3d 352 (2002). Credibility decisions are for the factfinder, and the factfinder is not required to believe any witness's testimony, especially that of the accused, because he is the person most interested in the outcome of the trial. *Caldwell v. State*, 2009 Ark. App. 526, 334 S.W.3d_82.

Officer Donald Eversole, a detective for the Van Buren Police Department, testified for the State. On July 1, 2008, Officer Eversole accessed Yahoo Instant Messenger on a computer and posed as a fourteen-year-old girl named Amanda Moore. According to Officer Eversole, Mr. Trice, using the screen name "secret black man," made first contact from his computer in Little Rock, and the two engaged in a lengthy on-line conversation.

During the conversation, "Amanda" represented that she was fourteen years old and lived in Van Buren. From there, the conversation became sexually explicit, with Mr. Trice making numerous references to oral sex and saying, "I will want to f*** you if we meet." In addition, Mr. Trice used a web camera to show himself nude and fondle himself on the officer's computer screen. They exchanged phone numbers and Mr. Trice suggested that

they meet in a safe place. “Amanda” invited Mr. Trice to come to her house sometime after 9:00 the next morning, when her mother would be at work. Mr. Trice agreed and was given an address where the meeting was to take place. Mr. Trice said “I can be your secret lover” and admonished “Amanda” not to tell anyone. He said he would be there the next morning in a white truck.

On the following morning, Officer Patti Bonewell posed as Amanda Moore and attempted without success to telephone Mr. Trice until finally getting a call through to him at 9:09 a.m. She asked Mr. Trice where he was. Mr. Trice replied that he was close. Moments later, Mr. Trice arrived at the address provided to him in a white truck and walked to the front door. At that time, he was arrested.

After arresting Mr. Trice, the police searched his person and his truck. The police found a map showing directions from his Little Rock address to the Van Buren address. There was also a Global Positioning System device in appellant’s truck that displayed the Van Buren address. The police subpoenaed the telephone records and determined that the phone number provided by Mr. Trice was in his name. Officer Eversole testified that there was no question in his mind that Mr. Trice was the person on the chat log and web camera.

Mr. Trice testified in his own defense, and he acknowledged having an on-line conversation and fondling himself on his web camera. However, he maintained that he did these things to scare the person and get him off his computer. He stated that he had been doing work on his computer when he saw a message from “Amanda.” Mr. Trice testified

that he did not believe the person with whom he was chatting was a fourteen-year-old girl because the person typed too quickly. He stated that he knew it was not a child and did not do these things to entice, seduce, or solicit sex. Mr. Trice testified that he only went to the Van Buren address to investigate and see who was on his computer. Mr. Trice stated that he needed to see the person's face so he could identify him to the police.

On appeal, Mr. Trice argues that there was no substantial evidence to support his conviction for computer child pornography. He contends that there was a lack of evidence that he believed he was dealing with a child, citing the fact that only twice during their lengthy conversation did the person represent that she was fourteen. Moreover, appellant asserts that the chat log did not demonstrate that he ever made any comments about the person's youthfulness, indicating that he did not notice her age as represented. Mr. Trice further argues that another missing element was evidence of his intent to have sex with the girl. He notes that no condoms were found in his truck and submits that although he made sexually explicit comments on the chat log, this does not necessarily conform with his actual intentions because the comments were made in an anonymous on-line setting.

Mr. Trice cites *Strong v. State*, 372 Ark. 404, 277 S.W.3d 159 (2008), where the supreme court held that for circumstantial evidence to provide substantial evidence it must be consistent with the defendant's guilt and inconsistent with any other reasonable conclusion. Mr. Trice contends that it was reasonable to conclude that he went to Van Buren only to investigate who was on his computer, and that even if he went there to visit

a fourteen-year-old girl it was not to solicit sexually explicit conduct. Therefore, Mr. Trice asks that his conviction be reversed.

A criminal defendant's intent or state of mind is seldom capable of proof by direct evidence and must usually be inferred from the circumstances of the crime. *Gikonyo v. State*, 102 Ark. App. 223, 283 S.W.3d 631 (2008). Given the circumstances of this case, there was substantial evidence to support the jury's conclusions that Mr. Trice believed he was conversing with a child on-line and knowingly solicited the person to engage in sexually explicit conduct.

The chat log introduced into evidence showed that "Amanda" said that she was fourteen, and Mr. Trice responded, "OKAY so how can we meet?" The response to that question was "don't know, I cant drive." Later in the conversation, Mr. Trice asked "Amanda" whether she had kids, and she responded "no silly im only 14." Mr. Trice said "okay." He later acknowledged "I am older." From these representations, there was substantial evidence that Mr. Trice believed the person to be a child.

There was also substantial evidence that Mr. Trice knowingly solicited the person to engage in sexually explicit conduct. The chat log is replete with sexually explicit comments by Mr. Trice, and he admonished "Amanda" to make sure that her mother would not come home so they could be alone in bed at her house. Furthermore, Mr. Trice used his web camera to transmit a video of him fondling himself, followed by him saying, "I will let you s*** it." We have no hesitation in holding that this was sufficient evidence of appellant's

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requisite state of mind under the statute.

Affirmed.

KINARD and GRUBER, JJ., agree.