

Case Summary

David Dolch appeals his two convictions for child solicitation as a Class C felony. Dolch argues that insufficient evidence exists to support his convictions. Finding the evidence sufficient, we affirm.

Facts and Procedural History

On July 10, 2006, the Indianapolis Police Department conducted an Internet investigation involving the solicitation of children for sex. As part of the investigation, the investigators created a profile on the Yahoo member directory of a fifteen-year-old girl named “Samantha Dyer.” The profile had a picture of what appeared to be a young girl in a cheerleader uniform who described herself as a “very cool 15 year old.” Tr. p. 17. On that same day, Detective Darin Odier, posing as “samatha_dyer61,” entered an Indiana Yahoo romance chat room. “Samantha” was contacted by “in_man_50” that same afternoon. An instant message chat ensued between “Samantha” and “in_man_50”:

samantha_dyer61: 15 f indy
samantha_dyer61: asl?¹
in_man_50: 50/M/Ft. Wayne

* * * * *

in_man_50: you sound rather appealing yourself!

* * * * *

in_man_50: I do get through the Indy area periodically [sic]
in_man_50: on my way to Columbus. I have a customer down there
samantha_dyer61: cool

* * * * *

in_man_50: and you are a very pretty young lady
in_man_50: besides being very sexy! Lol

¹ This is an online chat acronym requesting someone’s age, sex, and location. Urban Dictionary, <http://www.urbandictionary.com/define.php?term=asl> (last visited Feb. 7, 2008).

in_man_50: and appealing
samantha_dyer61: why you laughing at sexy?
in_man_50: because it is very true- and I am much older
samantha_dyer61: no biggie
in_man_50: ok- interesting then
samantha_dyer61: interesting how
in_man_50: the thought of enjoying you
in_man_50: and vice versa

* * * * *

samantha_dyer61: how often you get to indy
in_man_50: every month or so
samantha_dyer61: been here this month?
in_man_50: nope

* * * * *

in_man_50: where are your thoughts?

* * * * *

in_man_50: where are we going with this?
in_man_50: what would you like?
samantha_dyer61: u tell me, i usually don[']t drive the ship
in_man_50: I can handle that one
samantha_dyer61: go ahead captain
in_man_50: if the water is receptive to the penetration
samantha_dyer61: im all ears
in_man_50: just ears?

* * * * *

in_man_50: I would hope it would be more centralized in the torso!
samantha_dyer61: uh yeah
in_man_50: I would like if you would
samantha_dyer61: would what?
in_man_50: get together to enjoy each other

* * * * *

in_man_50: you are still very young and pardon the expression "jail bait"

* * * * *

in_man_50: I think I would drive you crazy with foreplay

* * * * *

in_man_50: such as kissing, licking, sucking, gentle biting, and licking and sucking cl*t!

* * * * *

in_man_50: moaning, moving, and begging for satisfaction

* * * * *

samantha_dyer61: now when do you come thru indy

in_man_50: probably within the next couple of weeks

* * * * *

in_man_50: you would be very pleasant when very wet and throbbing

* * * * *

in_man_50: very enjoyable stretching and pleasing

samantha_dyer61: oh yea

in_man_50: what would sam like now?

samantha_dyer61: whatever u have to give me

in_man_50: well- will a thick 8 do?

* * * * *

in_man_50: and does Sam give good head?

samantha_dyer61: never have

in_man_50: you haven't sucked c*ck?

samantha_dyer61: not yet:">

in_man_50: ok

in_man_50: well- it might be time

* * * * *

in_man_50: have you ever done doggie?

samantha_dyer61: uh no, but sounds cool

in_man_50: you on all fours- and entry from behind

samantha_dyer61: wow

in_man_50: or your legs and knees over my shoulders

samantha_dyer61: i am limber

in_man_50: good girl

* * * * *

in_man_50: you would like to have sex- all of it

samantha_dyer61: maybe..you?

in_man_50: sounds nice- if we can stay out of trouble because of your age

samantha_dyer61: i don't kiss and tell

in_man_50: ok

in_man_50: give me an e-mail with a way to get a hold of you

* * * * *

in_man_50: I would be interested in doing you
samantha_dyer61: awesome
samantha_dyer61: when
in_man_50: as soon as we can work out the time and place

* * * * *

in_man_50: have a number where you can be reached and not traced?
samantha_dyer61: im 15 where would I get one

* * * * *

in_man_50: you sound ready right now
in_man_50: I like that
Samantha_dyer61: u think
In_man_50: the question is if you really are

* * * * *

in_man_50: any thoughts or desires?

* * * * *

in_man_50: just asking for your desires- you need to be more straight forward when asked a question- I want a woman with a mind of her own

* * * * *

in_man_50: tell me what you would like- don't worry I will take charge in person

* * * * *

samantha_dyer61: umm i like to learn new things and be touched, the stuff u said sounds sooooooo good
in_man_50: k- and how is your p*ssy feeling? Cl*t? n*pples?
samantha_dyer61: wet, hard, and nice
in_man_50: and you would like to f*ck?
samantha_dyer61: yes i would

* * * * *

in_man_50: if I was there I would undress you, lay you down, spread you and eat you

* * * * *

in_man_50: lick and suck on your hard n*pples- lift your t*ts up by them
samantha_dyer61: wow ur awesome
in_man_50: and then!

in_man_50: just give you the head to see how receptive you are
samantha_dyer61: yum
in_man_50: it will be- yes
in_man_50: hopefully we can talk soon

* * * * *

in_man_50: when did you f*ck the first time
samantha_dyer61: almost 15
in_man_50: k- older guy?
samantha_dyer61: yes
in_man_50: both?
samantha_dyer61: the first was a bit older the next was 20's
in_man_50: k- and how did your p*ssy feel?
samantha_dyer61: first hurt second better

* * * * *

in_man_50: I am sure you will be very receptive
in_man_50: and will love spreading for me
samantha_dyer61: well yes but really tired of typing about it,
in_man_50: k- I need to get back to work
samantha_dyer61: k
in_man_50: we will hook up again soon
samantha_dyer61: k
in_man_50: nice impersonation
samantha_dyer61: huh?
samantha_dyer61: what?
in_man_50: undercover policeperson?
samantha_dyer61: ok, well if u think so
samantha_dyer61: i don[']t understand
in_man_50: neither do I

Appellants App. p. 14-21. During the course of this conversation, “in_man_50” sent “Samantha” a photograph of himself, the two of them exchanged e-mail addresses, and “in_man_50” added the false screen name used by Samantha to his “buddy list.” The chat ended with no specific plans to meet being made, and “in_man_50” never attempted to call “Samantha.”

The police eventually learned that “in_man_50” was Dolch. Based on the above information, a legal and valid search warrant was executed at Dolch’s work place.

Detective Odier spoke with Dolch who agreed to give the detective a voluntary recorded statement that he chats on Yahoo using the screen name “in_man_50.” Dolch provided Detective Odier with his password, stated that he has maintained the same screen name and password for many years, that he sometimes chats online about sex, and acknowledged that in the above referenced online conversation, he knew that “Samantha” was a fifteen-year-old female.

On August 12, 2006, the State charged Dolch with two counts of child solicitation as a Class C felony.² Following a bench trial, the trial court found Dolch guilty as charged. The trial court sentenced Dolch to concurrent three-year terms of incarceration but ordered the sentences suspended in lieu of probation. Dolch now appeals.

Discussion and Decision

Dolch argues that the evidence is insufficient to support his convictions. In determining the sufficiency of the evidence, we neither reweigh the evidence nor resolve questions of credibility. *McHenry v. State*, 820 N.E.2d 124, 126 (Ind. 2005). The evidence is sufficient if an inference may reasonably be drawn from it to support the judgment. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). The child solicitation statute provides as follows:

(a) As used in this section, “solicit” means to command, authorize, urge, incite, request, or advise an individual:

* * * * *

(4) by using a computer network (as defined in Ind. Code 35-43-2-3(a));

* * * * *

to perform an act described in subsection (b) or (c).

² Ind. Code § 35-42-4-6. Although both counts stem from the same online conversation, it appears that Count I is based on sexual intercourse and Count II is based on fondling or touching.

* * * * *

(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits . . . an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in:

- (1) sexual intercourse;
- (2) deviate sexual conduct; or
- (3) any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network (as defined in Ind. Code 35-43-2-3(a)). . . .

(d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

Ind. Code § 35-42-4-6. “Request” means “[a]sk to be favoured with or given (a thing), ask for; express a wish or desire *that, to do*; ask to be allowed *to do*; ask (a person) *to do* something.” *Kuypers v. State*, 878 N.E.2d 896, 898 (Ind. Ct. App. 2008) (quoting *The New Shorter Oxford English Dictionary* 2556 (Thumb Index ed. 1993)) (emphasis in original), *trans. pending*. “Advise” means, in relevant part, “[r]ecommend.” *Id.* (quoting *The New Shorter Oxford English Dictionary* 32 (Thumb Index ed. 1993)).

Here, Dolch maintains that his

[c]ase lacks any evidence, other than his uttered words, to support a finding [that] he had the requisite solicitous intent towards “Samantha.” It is Mr. Dolch’s argument that for the child solicitation offense to occur, a perpetrator has to have the intent to actually solicit the child into engaging in the prohibited sexual act. Although in Mr. Dolch’s case, his conversations with “Samantha” were wholly improper, immoral, and offensive, the trial court did not have [s]ufficient evidence to find his conversation actively commanded, authorized, urged, incited, requested, or advised “Samantha” to engage in sexual conduct.

Appellant's Br. p. 11. We disagree.

Another panel of this Court recently addressed whether a defendant's online chat with an alleged fifteen-year-old girl, in which the defendant did not specifically ask her to do anything or make specific arrangements to meet in person, was insufficient to support a child solicitation conviction. *Kuypers*, 878 N.E.2d at 896-97. In *Kuypers*, the police embarked on a similar Internet investigation involving the solicitation of children for sex. As part of this investigation, the police also used the "samantha_dyer61" profile on the Yahoo member directory. *Kuypers*, 878 N.E.2d at 897. The relevant facts from *Kuypers* are as follows:

Kuypers engaged in an online conversation with a person he believed to be a fifteen-year-old girl. In the course of that conversation, he elicited information regarding her age, height[,] weight, and breast size. He asked what she likes to do for a "good time," she replied, "name it," and he described his idea of a "good time": "bent over your table with my d*ck in your p*ssy, while I smack your [a]ss . . . [.]" State's Ex. 4. He asked her if she likes "doggie," clearly referring to a specific position for sexual intercourse. *Id.* Kuypers then asked her if she had "meet [sic] off line," and after she responded "yes," he asked, "so when can i take you out[?]" *Id.* He explained, "i just never been in indy all that much and dont no [sic] where anything is. . . ." *Id.* Kuypers also sent Samantha four pictures of himself.

Id. at 898-99. Kuypers argued that because his conversation with "Samantha" did not include details and he did not act on their conversation, he was being impermissibly punished for his fantasizing thoughts. The *Kuypers* Court disagreed, stating:

We believe that an inference may [be] reasonably drawn from this evidence that Kuypers was, at the least, expressing a wish or desire that Samantha meet him in person and engage in, among other things, sexual intercourse. He asked Samantha to meet him offline; that she responded by explaining that she was grounded does not change the fact that he made the request, that he recommended a course of action, or that he implicitly gave

her permission-authority-to meet him in person and engage in sexual activity.

Id. at 899.

As the *Kuypers* Court noted, our General Assembly criminalized those acts by enacting a law banning child solicitation via the Internet. Thus, the child solicitation statute does not require that a solicitor actually complete the act of meeting with his or her victim to commit the crime of child solicitation. *LaRose v. State*, 820 N.E.2d 727, 730-32 (Ind. Ct. App. 2005) (finding the statute to be constitutional and explaining that “the crime of child solicitation is *completed* at the time of the utterance[; t]he urging to perform the act-rather than the performance of the urged act-constitutes child solicitation.”) (emphasis in original) (citation omitted), *trans. denied*. Moreover, the statute does not require that the solicitor provide details in the conversation such as the time and place of the act. Indeed, the statute specifically states that “the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.” I. C. § 35-42-4-6(d). Rather, it is the mere “[e]xposure of children to such solicitations . . . that the statute seeks to avoid.” *LaRose*, 820 N.E.2d at 733 n.6. Thus, to commit child solicitation, a person must merely “command, authorize, urge, incite, request, or advise” a child to commit the act. *See* I.C. § 35-42-4-6. As such, the *Kuypers* Court concluded:

Here, it may reasonably be inferred from the evidence that *Kuypers* requested and advised Samantha to meet with him and engage in, among other things, sexual intercourse. The absence of details does not make him any less guilty. We find, therefore, that the State presented sufficient evidence to support *Kuypers*’s conviction for child solicitation.

Kuypers, 878 N.E.2d at 899. We find the reasoning in *Kuypers* persuasive.

Just as in *Kuypers*, Dolch engaged in an online conversation with an individual he believed to be a fifteen-year-old girl. In the course of that conversation, Dolch elicited information regarding her age, sexual proclivities, and sexual desires. He asked her what she likes sexually, she replied, “u tell me, I usually don[']t drive the ship,” and he responded, “I think I would drive you crazy with foreplay . . . such as kissing, licking, sucking, gentle biting, and licking and sucking c*it!. . . moaning, moving, and begging for satisfaction.” Appellant’s App. p. 17. He asked her if she had ever done “doggie,” clearly referring to a specific position for sexual intercourse. *Id.* at 18. Dolch then asked her if she “would like to have sex,” and stated that he “would be interested in doing [her] . . . as soon as we can work out the time and place.” *Id.* at 18-19. He then asked “Samantha” if she had “a number where [she] can be reached and not traced[.]” *Id.* at 19. Dolch also sent “Samantha” a picture of himself.

From this evidence we can reasonably infer that Dolch requested “Samantha” to submit to fondling with the intent to arouse the sexual desires of either her or him and to engage in sexual intercourse. Accordingly, sufficient evidence exists to support Dolch’s convictions for child solicitation.

Affirmed.

SHARPNACK, J., and BARNES, J., concur.