# In The
# Court of Appeals
# Seventh District of Texas at Amarillo

No. 07-19-00122-CR

SEBASTIAN ALEXANDER ZAPATA, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

On Appeal from the 238th District Court
Midland County, Texas[1]
Trial Court No. CR51328, Honorable Rodney W. Satterwhite, Presiding

May 21, 2020

## MEMORANDUM OPINION

Before PIRTLE and PARKER and DOSS, JJ.

Appellant, Sebastian Alexander Zapata, appeals his conviction by jury for the offense of online solicitation of a minor.[2] After finding appellant guilty, the jury assessed punishment at ten years' incarceration but recommended that appellant be placed on

[1] Originally appealed to the Eleventh Court of Appeals, this case was transferred to this Court by the Texas Supreme Court pursuant to its docket equalization efforts. *See* TEX. GOV'T CODE ANN. § 73.001 (West 2013).

[2] *See* TEX. PENAL CODE ANN. § 33.021(c) (West 2016).

community supervision. The trial court placed appellant on community supervision for a period of five years. We affirm the trial court's judgment.

## Factual and Procedural Background

Cody Allen, a special agent with the Texas Department of Public Safety who had been certified in internet crimes against children, posted an undercover ad to Craigslist that indicated that he was a thirteen-year-old girl. The ad was posted in a section entitled "Women Seeking Men." Allen's ad received a response from appellant. Another officer, Chris Davis, conversed with appellant. Davis told appellant that he was a thirteen-year-old girl named Crystal. Appellant told Crystal that he was twenty-two but that the age difference did not bother him. During the discussion, appellant offered to get a hotel room or to "chill" in his car. After Crystal asked what the couple would do in the hotel room, appellant stated that, "We would do it gentle but firm and passionate. And after that[,] we would shower together and do it again. And then do it again on the bed, and then shower again. Rinse and repeat." Appellant later stated that he "would love to teach sex with" Crystal. Crystal then told appellant to come to the parking lot of an Office Depot. Appellant arrived at the parking lot less than fifteen minutes later. After arriving at the rendezvous location, appellant was arrested. Appellant possessed the phone that he had used to text Crystal when he was arrested.

After appellant was arrested, he was interviewed by Detective David Olivera. Appellant admitted that he was the person who had messaged Crystal. He admitted that his initial intention was to have sex with Crystal but he claimed to have changed his mind and went to meet with her because he wanted to save her from men on Craigslist.

Appellant was charged with the offense of online solicitation of a minor. The case went to trial where the above-identified facts were introduced. During the trial, appellant testified on his own behalf. He testified that it had been his intention to convince the thirteen-year-old he was communicating with to stay away from Craigslist. He testified that, while he mentioned sex in his conversation with Crystal, he had no intention to follow through with any such action. The jury returned a verdict finding appellant guilty of online solicitation of a minor. After a short punishment hearing, the jury sentenced appellant to ten years' incarceration and a $10,000 fine, but recommended that appellant be given community supervision. The trial court entered judgment sentencing appellant to five years of community supervision. Appellant timely appealed from this judgment.

Appellant's sole issue contends that the evidence is legally insufficient to support the jury's finding of appellant's guilt for the offense of online solicitation of a minor.

Standard of Review

In assessing the sufficiency of the evidence, we review all the evidence in the light most favorable to the verdict to determine whether any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319, 99 S. Ct. 2781, 61 L. Ed. 2d 560 (1979); *see Brooks v. State*, 323 S.W.3d 893, 912 (Tex. Crim. App. 2010). "[O]nly that evidence which is sufficient in character, weight, and amount to justify a factfinder in concluding that every element of the offense has been proven beyond a reasonable doubt is adequate to support a conviction." *Brooks*, 323 S.W.3d at 917 (Cochran, J., concurring). We remain mindful that "[t]here is no higher burden of proof in any trial, criminal or civil, and there is no higher standard of appellate review than the standard mandated by *Jackson*." *Id*. When

reviewing all the evidence under the *Jackson* standard of review, the ultimate question is whether the jury's finding of guilt was a rational finding. *See id*. at 906-07 n.26 (discussing Judge Cochran's dissenting opinion in *Watson v. State*, 204 S.W.3d 404, 448-50 (Tex. Crim. App. 2006), as outlining the proper application of a single evidentiary standard of review[3]). "[T]he reviewing court is required to defer to the jury's credibility and weight determinations because the jury is the sole judge of the witnesses' credibility and the weight to be given their testimony." *Id*. at 899.

In the present case, appellant contends that the evidence is insufficient to support his conviction because it did not establish that he solicited Crystal to have sex. He contends that the word solicit, in its common usage, means "to endeavor to obtain by asking or pleading." Appellant argues that he did not ask or plead with Crystal to have sex with him and, therefore, he did not solicit her. However, reviewing all the evidence in the light most favorable to the verdict, we conclude that sufficient evidence supports the jury's verdict. While communicating with Crystal, appellant offered to get a hotel room and, after Crystal asked why they would need a hotel room, appellant stated that the couple would "do it" multiple times, shower together, and that appellant would "teach sex with" Crystal. We conclude that a rational jury could have found that appellant solicited Crystal to have sex beyond a reasonable doubt. *See Coe v. State*, Nos. 09-13-00409-CR, 09-13-00410-CR, 2015 Tex. App. LEXIS 6374, at *20 (Tex. App.—Beaumont June 24, 2015, pet. ref'd) (mem. op., not designated for publication) (jury can view the contents of an online communication and infer that the defendant solicited the person he thought

[3] Appellant's sole issue is presented as a challenge to the legal sufficiency of the evidence. However, we construe *Brooks* as replacing separate legal and factual sufficiency reviews with a single standard for evidentiary sufficiency. As such, we will review appellant's issue under this unified sufficiency standard.

was a minor to have sex); *Ex parte Victorick*, 453 S.W.3d 5, 15 (Tex. App.—Beaumont 2014, pet. ref'd) (same).

Appellant also makes a brief argument that the State did not prove that appellant had the requisite intent to have the minor engage in sexual contact. The offense of online solicitation of a minor is complete at the time that the solicitation is made and it is at that time that the requisite intent must exist. *Ex parte Zavala*, 421 S.W.3d 227, 232 (Tex. App.—San Antonio 2013, pet. ref'd). In his interview with Detective Olivera, appellant admitted that it was his intention to have sex with Crystal until he masturbated in the shower while getting ready to meet Crystal. Thus, there was sufficient evidence to support the jury's determination that appellant possessed the requisite intent to engage in sexual contact with a minor. The jury was free to disregard appellant's testimony at trial that he never intended to have sex with Crystal. *See Menefee v. State*, 211 S.W.3d 893, 901 (Tex. App.—Texarkana 2006, pet. ref'd) ("The jury was free to weigh the evidence and reconcile any conflicts.").

We overrule appellant's sole issue.

## Conclusion

Having overruled appellant's sole issue, we affirm the judgment of the trial court.

Judy C. Parker
Justice

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