UNITED STATES AIR FORCE COURT OF CRIMINAL APPEALS

UNITED STATES

v.

Technical Sergeant ARNOLD HOSKINS
United States Air Force

ACM 35738

27 January 2006

Sentence adjudged 16 September 2003 by GCM convened at Little Rock Air Force Base, Arkansas. Military Judge: Patrick M. Rosenow (sitting alone).

Approved sentence: Dishonorable discharge, confinement for 1 year, and reduction to E-1.

Appellate Counsel for Appellant: Colonel Carlos L. McDade, Major Terry L. McElyea, and Captain Diane M. Paskey.

Appellate Counsel for the United States: Colonel LeEllen Coacher, Lieutenant Colonel Gary F. Spencer, Lieutenant Colonel Robert V. Combs, and Major James K. Floyd.

Before

BROWN, MOODY, and FINCHER
Appellate Military Judges

OPINION OF THE COURT

This opinion is subject to editorial correction before final release.

FINCHER, Judge:

We have examined the record of trial, the assignments of error, and the government's answer. The appellant argues he cannot be convicted of attempting to entice a minor into having sex with him or of attempting to transfer obscene materials to her, when the "minor" was really an adult law enforcement officer posing as a minor. We disagree and affirm.

The appellant was a 42-year-old, married technical sergeant who worked in the maintenance squadron at Little Rock Air Force Base. In his spare time, he liked to use his home computer to chat online. One day, he started chatting with "vvsmoochievv," who identified herself as a 13-year-old girl named "Ashlie." This started a virtual relationship in which the appellant solicited "Ashlie" for sex. During one online conversation, the appellant sent "Ashlie" an electronic photo of his penis.

The appellant and "Ashlie" also talked on the telephone. During the course of these conversations, they arranged to meet so they could engage in sexual activity. The first meeting was supposed to take place at "Ashlie's" apartment complex. The appellant drove to the complex manager's office and asked for directions to the apartment, but left when the police showed up to investigate an unrelated incident. "Ashlie" and the appellant next arranged to rendezvous at a neighborhood swimming pool. This time when the appellant showed up, the police arrested him.

In reality, "Ashlie" was Detective Keith Jackson, a criminal investigator with the North Little Rock Police Department. During his telephone conversations with the appellant, he used electronic voice-altering technology to mimic the speech qualities of a young teenage girl.

We review the constitutionality of a statute de novo. *United States v. Wright*, 53 M.J. 476, 478 (C.A.A.F. 2000). The appellant claims he could not have violated 18 U.S.C. §§ 2242(b) and 1470, because "Ashlie" was not really a minor. He offers no case on point to support his proposition.

To prove an attempt, the prosecution must prove a specific intent to commit an offense accompanied by an overt act that tends to accomplish the unlawful purpose. *United States v. Cook*, 61 M.J. 757, 759 (A.F. Ct. Crim. App 2005); *Manual for Courts-Martial, United States* (*MCM*), Part IV, ¶ 4b (2005 ed.).[1] If a person believes he is purposely engaging in conduct that would constitute an offense, factual impossibility is not a defense. *MCM*, Part IV, ¶ 4c(3); *see also Cook*, 61 M.J. at 760. The appellant's case is replete with evidence showing he thought "Ashlie" was a 13-year-old girl. Consequently, "Ashlie's" true age, identity, or gender has no impact on the prosecution's ability to prove an attempt.

The appellant asks us to review the legislative history behind 18 U.S.C. §§ 2242(b) and 1470 and argues that Congress did not intend the "attempt" portion of these statutes to apply to the age of the victim. We find no such intention expressed in the legislative history. *See United States v. Spurlock*, 386 F. Supp. 2d 1072, 1074 (W.D. Mo. 2005). Nor does the plain language of the statute support such a construction. *See United States v. Meek*, 366 F.3d 705 (9th Cir. 2004); *United States v. Root*, 296 F.3d

[1] This provision is the same in the previous version of the *Manual* that was in effect at the time of trial.

1222 (11th Cir. 2002). *See also United States v. Honzik*, ACM 34667 (A.F. Ct. Crim. App. 26 Nov 2003) (unpub. op.). Accordingly, we hold that 18 U.S.C. §§ 2242(b) and 1470 do not require an "actual" minor to support an attempt conviction.

We have examined the appellant's other assignment of error and find it has no merit. *See United States v. Matias*, 25 M.J. 356, 361 (C.M.A. 1987). The approved findings and sentence are correct in law and fact, and no error prejudicial to the substantial rights of the appellant occurred. Article 66(c), UCMJ, 10 U.S.C. § 866(c); *United States v. Reed*, 54 M.J. 37, 41 (C.A.A.F. 2000). Accordingly, the findings and sentence are

AFFIRMED.

OFFICIAL

LAQUITTA J. SMITH
Documents Examiner