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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1593**

State of Minnesota,
Respondent,

vs.

Paul Raymond Lund, Jr.,
Appellant.

**Filed May 13, 2019
Affirmed
Bjorkman, Judge**

Brown County District Court
File No. 08-CR-17-902

Keith Ellison, Attorney General, Karen B. McGillic, Assistant Attorney General, St. Paul, Minnesota; and

Charles W. Hanson, Brown County Attorney, Daniel Kalk, Assistant County Attorney, New Ulm, Minnesota (for respondent)

Jacob M. Birkholz, Birkholz & Associates, LLC, Mankato, Minnesota (for appellant)

Considered and decided by Florey, Presiding Judge; Connolly, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

BJORKMAN, Judge

Appellant challenges his conviction of agreeing to hire a minor to engage in sexual penetration, arguing that the evidence was insufficient to establish he reasonably believed

the female he agreed to hire was 16 years old and that the district court applied the wrong legal standard. We affirm.

FACTS

On August 26, 2017, a three-county law enforcement sex-trafficking task force established a sting operation at a house in Springfield. The task force posted an advertisement on a website known to offer illicit sexual services, describing “Ashley,” as “18,” and “tasty” with a “DANGEROUSLY Wild Side.” The advertisement includes a photo of a woman’s torso clothed in underwear.

Appellant Paul Raymond Lund initiated a text-message exchange with “Ashley,” ultimately agreeing to pay her for sexual penetration. After reaching this agreement, the following exchange about “Ashley’s” age occurred:

Lund: Do u care that I’m 46?
A: im fin wit 46, you care if im 16?
L: Thats abit illegal
A: u a cop?
L: No. But I go to jail if i get caught
A: me too. That’s y i waited til mom left
L: It would be fun to f-ck a tight 16 year old

After receiving additional photographs of “Ashley,” Lund inquired:

L: How can u be that young with those big tits? Are u white or black?
A: wte. got these wen i was like 12

Lund and “Ashley” continued to discuss various sex acts and where and when they would meet. “Ashley” explained that she was alone because her “mom and her BF went gambling.” As Lund approached what he believed was the location of the meeting, “Ashley” corrected the address, saying she mistakenly directed Lund to her “mom’s

house.” Lund eventually arrived at the address provided to him and was arrested at the door carrying over \$250 in cash.

After hearing his *Miranda* rights, Lund agreed to be interviewed by the sheriff’s deputy who portrayed “Ashley” in the text communications. Lund admitted going to the website, texting with a female, and agreeing to have sex with her. When asked when he learned the female was underage, Lund said, “She actually told me after I told her I was 46.” He further admitted that he “agreed to pay 200 dollars in return for sexual intercourse with a 16 year old female” although he knew that it was “a bit illegal.” He conceded that he “said something really stupid” after she revealed her age, referencing his statement that it would “be fun to f-ck a tight 16 year old.”

The state charged Lund with a felony-level prostitution offense, and the case proceeded to a court trial. At trial, Lund admitted communicating with a female about “rates for sex” but claimed he thought she was 18 years old. He testified that the photos sent to him suggested that she was older than 18, the photos did not look like the same person, and he thought she was toying with him about her age. And he stated that other discrepancies in the text messages made him question their truthfulness, including references to the type of birth control “Ashley” was using, the address for their planned meeting, and the price for sexual penetration. Lund explained that he went to the address because he was “curious,” but he did not believe that “Ashley” was under 18.

The district court determined that the state proved beyond a reasonable doubt that Lund agreed to hire a female he reasonably believed to be at least 16 years old but under the age of 18 to engage in sexual penetration. The court expressly rejected Lund’s

testimony that he was uncertain about “Ashley’s” age when he agreed to pay her for sexual penetration. Lund appeals.

DECISION

We address a challenge to the sufficiency of evidence supporting a conviction by carefully reviewing the record “to determine whether the evidence and reasonable inferences drawn therefrom, viewed in a light most favorable to the verdict, were sufficient to allow the [fact-finder] to reach its verdict.” *Lapenotiere v. State*, 916 N.W.2d 351, 360 (Minn. 2018) (quotation omitted). When the evidence supporting a conviction is circumstantial, we apply a two-step analysis. *State v. Harris*, 895 N.W.2d 592, 600 (Minn. 2017). First, we identify the circumstances proved “by resolving all questions of fact in favor of the jury’s verdict,” giving deference to the fact-finder’s credibility determinations. *Id.* Second, we separately consider the “reasonable inferences that can be drawn” from the circumstances proved. *Id.* at 601. To sustain a conviction, the circumstances proved, as a whole, “must be consistent with a reasonable inference that the accused is guilty and inconsistent with any rational hypothesis except that of guilt.” *Id.* When determining sufficiency, we apply the same review to bench trials and jury trials. *State v. Super*, 781 N.W.2d 390, 396 (Minn. App. 2010), *review denied* (Minn. June 29, 2010).

To convict Lund of the charged offense, the state was required to prove that he intentionally “hir[ed] or offer[ed] or agree[d] to hire an individual who [he] reasonably believe[d] to be under the age of 18 years but at least 16 years to engage in sexual penetration or sexual contact.” Minn. Stat. § 609.324, subd. 1(c)(3) (2016). Lund argues that his conviction must be reversed because the evidence was not sufficient to show that

he reasonably believed that “Ashley” was at least 16 years old but less than 18 years old, and that the district court applied a subjective, rather than an objective, standard of reasonableness. We address each argument in turn.

The state proved the following circumstances concerning Lund’s belief as to “Ashley’s” age. In text messages, “Ashley” informed Lund that she was 16 years old. “Ashley’s” texts included other details suggesting that she was a minor: she lived with her mother, had no car, and planned to use the money she received for having sex with Lund to buy a new cell phone. In his text messages, Lund expressed both delight at the prospect of engaging in sexual penetration with a 16-year-old and concern over the legal consequences of doing so. During his custodial interview, Lund repeatedly acknowledged that “Ashley” was 16 or a minor. He admitted that (1) he agreed to have sex with a minor; (2) he agreed to pay a specific sum “in return for sexual intercourse with a 16 year old female¹”; (3) he knew that it was “a bit illegal” to engage in sexual penetration with a 16-year-old; and (4) he told “Ashley” that it “would be fun” to engage in sexual penetration with a 16-year-old. And when asked to verify during the interview that “Ashley” had asked him whether he cared if she was 16, Lund responded, “Yes. Yeah I knew.”

Lund acknowledges that the circumstances proved are consistent with a reasonable inference of guilt. But he contends the circumstances also support the rational inferences

¹ Lund argues that his use of the word “basically” in response to the question whether he “agreed to pay 200 dollars in return for sexual intercourse with a 16 year old female” does not indicate agreement, but was merely a confused answer to a three-part question. We disagree. The record shows Lund repeatedly used “basically” as an expression of agreement during his interview.

that he reasonably believed “Ashley” was 18 or that he had no reasonable belief as to her age. He points to the website advertising “Ashley’s” age as 18, text messages in which he questions the developed physique depicted in the photos, discrepancies in the photos themselves, and discrepancies in “Ashley’s” text messages, which suggest she was not being truthful with him and might be older than she claimed to be. We are not persuaded. In applying the second step of the circumstantial-evidence analysis, we only consider the “reasonable inferences that can be drawn from the *circumstances proved*.” *Harris*, 895 N.W.2d at 601 (emphasis added). The evidence Lund cites is not consistent with the district court’s determination of guilt.

Moreover, the district court specifically rejected the “plausible innocent explanations” Lund advances, including Lund’s testimony that his expressed desire to have sex with a 16-year-old was merely “reminiscing” and that he went to the address only out of “curiosity.” The district court found Lund’s testimony regarding “Ashley’s” age was not credible:

[G]iven the significance of the age factor (as referenced by [Lund’s] initial comment of “that’s a bit illegal” when the subject of “Ashley’s” age was first mentioned), a comment of some type expressing doubt as to that fact at the time of arrest would have been expected had [Lund] not held the belief that the fictional person he had been dealing with . . . was 16 years old.

As fact-finder, the district court was free to accept or reject Lund’s efforts to recast the incriminating statements he made in text messages and his custodial interview. *See State v. Watkins*, 650 N.W.2d 738, 741 (Minn. App. 2002) (deferring to fact-finder on credibility

determinations). On this record, we conclude that the circumstances proved regarding Lund's reasonable belief as to "Ashley's" age are consistent only with Lund's guilt.

Lund also argues that his conviction must be reversed because the district court misapplied Minn. Stat. § 609.342, subd. 1(c)(3). The age element of the offense requires the state to prove the actor "reasonably believes" the person he agreed to hire for sexual penetration "to be under the age of 18 years but at least 16." Minn. Stat. § 609.342, subd. 1(c)(3). Lund contends that the district court erred by applying a subjective, rather than an objective, standard on this element. This argument is unavailing. The district court expressly found that Lund "agreed to hire an individual he reasonably believed to be under the age of 18, but at least 16 years old, to engage in sexual penetration or sexual contact." This ultimate finding of guilt followed detailed findings regarding Lund's admissions to police and the circumstances under which Lund agreed to hire "Ashley." These circumstances include that "Ashley" was stranded because her mother was out, wanted to use the money she would receive in exchange for sexual penetration to buy a new cell phone, was concerned about getting into trouble because of her age, and said she was 16 years old. These supported findings address both Lund's subjective belief and the reasonableness of that belief on this record. To the extent that the district court's memorandum of law focuses on Lund's claimed subjective beliefs concerning "Ashley's" age, it does so only for the purpose of addressing Lund's argument that he was not actually sure as he approached "Ashley's" house that he was going to go through with the crime.

In sum, the record evidence is sufficient to prove that Lund subjectively and reasonably believed that “Ashley” was 16 years old. And we discern no error in the district court’s application of the law.

Affirmed.