

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A22-0392**

State of Minnesota,
Respondent,

vs.

Derrick Sserwanja,
Appellant.

**Filed February 27, 2023
Affirmed
Worke, Judge**

Hennepin County District Court
File No. 27-CR-19-16163

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Mary F. Moriarty, Hennepin County Attorney, Zachary Stephenson, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Davi E. Axelson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Wheelock, Presiding Judge; Worke, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his electronic-solicitation-of-a-child conviction, arguing that the district court abused its discretion by admitting evidence regarding the typical behavior

of “johns” on an online dating site when they learn that they are chatting with a minor. We affirm.

FACTS

Appellant Derrick Sserwanja went to trial on a charge of engaging in electronic communication relating to sexual conduct with a child. He asserted an entrapment defense.

An officer testified that law enforcement creates profiles of fictional young girls on dating sites that men contact seeking sexual encounters. During the online communications, or “chats,” the officer using the fictional young girl’s profile discloses to a prospective “john” that the girl is 15 years old or younger. At trial, the prosecutor asked the officer: “[I]n your training and experience, what is the most common response by johns when they learn” that they are “chatting with . . . someone 15 years or younger[?]” The officer replied: “Most often that’s when they disengage the conversation.” He testified that some johns stay in the conversation. The officer stated that when a john disengages, officers will “not at any point reengage.”

The officer testified that he created a fictional profile for a girl named “Emma.” He indicated that Emma was 18 years old, which is the minimum age requirement to create a profile. He used images of an adult female that were publicly available online to create the profile.

On July 5, 2019, Emma received a message from Sserwanja. Sserwanja stated that he was 22 years old. Emma stated that she was 15 years old. Sserwanja replied, “I thought your profile said you were 18.” Emma replied that she had to say that she was 18 to create a profile. Sserwanja said that Emma’s age was not a problem.

Sserwanja suggested that he meet Emma at her house. She asked him what he would be interested in doing. Sserwanja replied that he wanted to do something sexual. Emma asked Sserwanja to bring condoms, and he stated that he would. Emma provided an address. Sserwanja stated that he was on his way. An officer stopped Sserwanja as he was traveling to the meeting place and took him into custody. Sserwanja admitted that Emma told him that she was 15 years old and that he hoped to have a sexual encounter with her.

Sserwanja testified that he believed that the dating site verified ages. He testified that Emma's profile indicated that she was 18 years old and she sent him a photo of a female who looked 18 years old. Sserwanja testified that he thought Emma lied about being 15 years old. Sserwanja testified that he was looking for a friendship with Emma and did not intend to have a sexual encounter with her. But he admitted that he sent sexual messages to Emma after she said that she was 15 years old.

The district court instructed the jury on the entrapment defense. In closing argument, Sserwanja's attorney argued that law enforcement created the criminal design and that Sserwanja would not have committed the crime without the acts of law enforcement because Sserwanja did not intend to commit the crime.

On rebuttal, the state argued that "[t]he fact that the government agent has provided what appears to be a favorable opportunity is not . . . a defense." The prosecutor concluded:

Please recall that law enforcement did not reach out and do not reach out in these types of operations. If after he learned that Emma was 15 the defendant had ceased the conversation, law enforcement would not have pursued him. It was the defendant's choice to send sexually explicit messages to a 15-

year-old that brought about the criminal act. No one forced him.

The jury found Sserwanja guilty as charged. The district court sentenced Sserwanja to a stay of imposition, pursuant to Minn. Stat. § 609.135 (2022), and placed him on probation for three years. This appeal followed.

DECISION

Sserwanja argues that the district court admitted “character evidence on the typical behavior of innocent men chatting [online] to suggest that because . . . Sserwanja did not follow this typical behavior [he] must be guilty.” “A district court’s evidentiary rulings will not be reversed absent a clear abuse of discretion.” *State v. Robertson*, 884 N.W.2d 864, 872 (Minn. 2016). Sserwanja bears the burden of showing that the district court abused its discretion and that he was prejudiced by it. *See State v. Bustos*, 861 N.W.2d 655, 666 (Minn. 2015).

Sserwanja challenges the following exchange that occurred between the prosecutor and an officer:

- Q: [W]hen the john learns that they’re, in fact, chatting with . . . someone 15 years or younger. And in your training and experience, what is the most common response by johns when they learn that information?
- A: Most often that’s when they disengage the conversation or end the text thread.
- Q: And if someone ends the text thread or the conversation at that point, do you reinitiate at any time as a chatter?
- A: We do not at any point reengage the conversation.
- Q: Have you as a chatter had your profiles flagged?
- A: Yes.
- Q: Have they been brought down after you’ve revealed the age to johns?

- A: Yes. Oftentimes we'll have the profile reported to the company after we reveal that the person is underage.
- Q: Obviously some do not get off of the conversation; is that fair to say?
- A: Correct. Some stay.

Over objection, the district court ruled that the evidence was admissible because:

The . . . question was relevan[t] to show how the defendant acted after he learned the age of the chatter, and that went directly to . . . one of the elements the [s]tate needs to prove. In addition . . . it is relevant to address the . . . defense of entrapment, and it's relevant to showing that . . . law enforcement did not pester, induce, or coerce action.

While we do not agree that evidence regarding the behavior of prospective johns is relevant to Sserwanja's behavior, we conclude that reversal is not necessary because Sserwanja fails to show that admission of this evidence was prejudicial.

The evidence was not used to show Sserwanja's character or that he fit a profile. Character evidence is generally prohibited to ensure that the jury does not return a conviction to penalize a defendant "because he is an undesirable person." *State v. Loebach*, 310 N.W.2d 58, 63 (Minn. 1981). But ceasing communication with an underage person is not a character trait. *See* Minn. R. Evid. 404(a) ("Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion.").

In arguing that the evidence was improperly used as evidence "akin" to character evidence, Sserwanja relies on *State v. Williams*. *See* 525 N.W.2d 538 (Minn.1994). In *Williams*, police officers testified regarding typical behavior of drug couriers. *Id.* at 548. The court stated that such evidence is like character evidence, and is inadmissible, because

it permits the jury to infer that, if the defendant's conduct fits the profile, then it is probative evidence that she is a drug courier. *Id.* But here, unlike in *Williams*, Sserwanja raised an entrapment defense. Thus, the evidence was not intended to show that Sserwanja fit the profile of a guilty person, but rather to show that it was possible for him to end the communication upon learning the age of the chatter.

Additionally, the evidence was a very small piece of the state's case. The state did not reference the evidence in closing argument, but only on rebuttal in addressing Sserwanja's entrapment defense. And even then, the prosecutor stated only, "[R]ecall that law enforcement did not reach out and do not reach out in these types of operations. If after he learned that Emma was 15 the defendant had ceased the conversation, law enforcement would not have pursued him." While the behavior of other johns is irrelevant to Sserwanja's behavior, there is an absence of any prejudice to Sserwanja. The district court did not abuse its discretion by admitting the evidence.

Affirmed.