

*This opinion is nonprecedential except as provided by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
A25-1340**

State of Minnesota,
Respondent,

vs.

Joshua Jerome Klimek,
Appellant.

**Filed May 26, 2026
Affirmed
Worke, Judge**

Otter Tail County District Court
File No. 56-CR-24-493

Keith Ellison, Attorney General, Timothy C. Rank, Assistant Attorney General, St. Paul, Minnesota; and

Michelle Eldien, Otter Tail County Attorney, Fergus Falls, Minnesota (for respondent)

Anthony M. Bussa, CJB Law, PLLC, Fergus Falls, Minnesota (for appellant)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Ross, Judge.

NONPRECEDENTIAL OPINION

WORKE, Judge

Appellant challenges his convictions of solicitation of a child through electronic communication and distribution of sexual material to a child through electronic

communication, arguing that the district court abused its discretion by denying his requests to raise the mistake-of-age defense and related jury instruction at trial. We affirm.

FACTS

The parties do not dispute the following facts. On December 26, 2023, appellant Joshua Jerome Klimek messaged 14-year-old I.K.-W. on Facebook Messenger. The message started with Klimek saying “Hi,” followed by a picture of Klimek’s face, a picture of Klimek’s bare chest, and two videos of Klimek manipulating his genitalia. Following the videos, the following conversation occurred:

Klimek: Merry Christmas from Fargo. Do you have a boyfriend? 7 inches last night. Hmu.¹

I.K.-W.: What? Do you know who I am?

Klimek: It’s fire!!! Don’t tell.

I.K.-W.: I’m [T.K.-W.] and [D.K.-W.]’s 14yearold daughter.

Klimek: What?????????

I.K.-W.: [T.K.-W.] and [D.K.-W.] are my parents. I met you at Jacob’s funeral.

Klimek: I thought you were older. I’ll make it up to you. Keep talking to me. I remember exactly. I know exactly who you are. I remember you. We talked, it was nice. Will you accept my friend request? How is your mom?

I.K.-W.: You’re going to ask how my mother is after you just basically assaulted her daughter.

Klimek: I know it. She was really sad for us. I really appreciate it, you two coming. I thought remember who you are NOW. After you said. Your profile said differently.

I.K.-W.: I am a regular teenage girl. I do not look any older then 15 at most.

Respondent State of Minnesota charged Klimek with soliciting a child through electronic communication and distribution of material describing sexual conduct to a child

¹ Trial testimony indicated that “Hmu” means “hit me up.”

through electronic communication under Minn. Stat. § 609.352, subd. 2a (2022). Klimek requested that the jury instructions include a mistake-of-age defense instruction because I.K.-W.'s Facebook-profile picture depicted her hand partially covering her face, and her information indicated that she was 22 years old. The district court reserved ruling pending evidence produced at trial.

At trial, I.K.-W. testified about the December 2023 Facebook messages. She also testified that the Facebook messages were not the first time she interacted with Klimek. I.K.-W. testified that she met Klimek at a funeral approximately ten months earlier. At the funeral, Klimek and I.K.-W. said “hi” to each other, and Klimek talked to I.K.-W.'s mother. The interaction lasted five to ten minutes.

The district court denied Klimek's request for the mistake-of-age defense and jury instruction. The district court recognized that the mistake-of-age defense is not available to defendants who had in-person contact with the child before their criminal-sexual behavior. The district court also recognized that the common meaning for “contact” was “the state or condition . . . of immediate proximity, or connection or interaction, communication.” Based on this definition, the district court determined the mistake-of-age defense was not available to Klimek because he had in-person contact with I.K.-W. at the funeral.

In response to the district court's decision, Klimek waived his right to a jury trial and requested a court trial. The district court found Klimek guilty as charged. The district court sentenced Klimek to 45 days in jail and placed him on probation for five years.

This appeal followed.

DECISION

Klimek argues that the district court abused its discretion by denying his requests to raise the mistake-of-age defense and related jury instruction. We review both issues to determine whether the district court abused its discretion. *See State v. Smith*, 940 N.W.2d 497, 506 (Minn. 2020) (reviewing district court’s denial of request to raise duress defense for abuse of discretion); *State v. Baker*, 13 N.W.3d 401, 408 (Minn. 2024) (reviewing district court’s refusal to give requested jury instruction for abuse of discretion).

A criminal defendant has a constitutional right to present a complete defense. *State v. Foster*, 20 N.W.3d 6, 18 (Minn. 2025). The right to present a complete defense includes allowing the defendant to examine adversarial witnesses and to offer their own evidence and testimony. *Id.* at 18-19. But the right to a complete defense is “not absolute.” *Id.* at 19 (quotation omitted). “At times, the right to present a complete defense may bow to accommodate other legitimate interests in the criminal trial process.” *Id.* (quotation omitted). The “defendant[] bear[s] the burden of production when asserting an affirmative defense.” *State v. Cannady*, 727 N.W.2d 403, 407 (Minn. 2007) (quotation omitted).

Under Minnesota law,

A person 18 years of age or older who uses the [i]nternet, a computer, computer program, computer network, computer system, [or] an electronic communications system . . . to commit any of the following acts, with the intent to arouse the sexual desire of any person, is guilty of a felony . . .

(1) soliciting a child or someone the person reasonably believes is a child to engage in sexual conduct;

. . .

(3) distributing any material, language, or communication, including a photographic or video image, that relates to or describes sexual conduct to a child or someone the person reasonably believes is a child.

Minn. Stat. § 609.352, subd. 2a. “Mistake as to age is not a defense” *Id.*, subd. 3 (2022); *see also* Minn. Stat. § 609.02, subd. 9(6) (2022) (“Criminal intent does not require proof of knowledge of the age of a minor even though age is a material element in the crime in question.”).

In *State v. Moser*, we concluded that the solicitation-of-a-child crime imposed strict liability because it eliminated the mistake-of-age defense. 884 N.W.2d 890, 895 (Minn. App. 2016). As such, the child-solicitation crime can impose an “unreasonable duty” on a defendant by requiring a defendant to ascertain the age of a child who, over the internet, falsely represents themselves as an adult. *Id.* at 902, 904. We also recognized that strict liability is acceptable for two types of crimes: “public welfare offenses and crimes [in which] the circumstances make it reasonable to charge the defendant with knowledge of the facts that make the conduct illegal.” *Id.* at 897. Therefore, the child-solicitation crime can impose strict liability when the defendant meets the underage victim in person because, at that point, the defendant can reasonably ascertain the age of the victim. *Id.* at 904.

Klimek argues that the district court applied an incorrect definition of prior in-person contact, claiming that an interaction between the adult and child must be “intentional and knowing” to be sufficient to impose strict liability.

Here, the district court applied the common meaning of the word “contact” that we used in *State v. Phipps*: “[t]he state or condition . . . of immediate proximity,” or

‘[c]onnection or interaction; communication.’” 820 N.W.2d 282, 286 (Minn. App. 2012) (quoting *The American Heritage College Dictionary* 299 (3d ed. 2000)). The district court’s use of this definition to determine whether Klimek and I.K.-W. had in-person contact to impose strict liability aligns with *Moser*. A child’s or other witness’s remembrance of the proximity or interaction between the child and adult before the solicitation indicates that the prior interaction had substance and was not transitory. Such a memorable occurrence indicates that the adult had a reasonable opportunity to assess the child’s age. Strict liability was proper to impose.

Additionally, the purpose and public policy behind Minn. Stat. § 609.352, subd. 2a, “is to protect children from sexual abuse and exploitation and from exposure to harmful sexual material.” See *State v. Muccio*, 890 N.W.2d 914, 928 (Minn. 2017). Criminalizing the solicitation of a child is necessary because “solicitation often leads to abuse, prostitution, and kidnapping, which are commonly associated with sexual conduct.” *State v. Koenig*, 666 N.W.2d 366, 375 (Minn. 2003) (citation omitted). “[E]ven if a victim lies about his or her age, an adult should not be allowed to hide behind the fact that the victim indicated he or she was . . . older because the subject at issue concerns criminal activity against children.” *Id.* “[I]f a person is planning to engage in sexual activities with someone in a youthful age range, that person takes the risk of criminal sanctions if [they do] not take the trouble to satisfactorily verify the solicited person’s age.” *Id.*

While the district court applied the meaning of “contact” we used in *Phipps*, which considered whether contact occurred in an order-for-protection matter, 820 N.W.2d at 286, this common definition fulfills the public policy and statutory intent to protect children.

Just like a protection order protects the victim from an abuser, any adult who is in immediate proximity of, or has a connection, interaction, or communication with a child, has strict liability imposed upon them to protect the child against solicitation, grooming, and future sexual harm. *See Koenig*, 666 N.W.2d at 375 (recognizing solicitation of a child leads to future sexual harm).

Even assuming that in-person contact requires “intentional and knowing” contact, Klimek failed to satisfy his burden of production because his messages to I.K.-W. belie his assertion that the funeral interaction was fleeting. Upon I.K.-W. responding to Klimek’s inappropriate messages that she is a 14-year-old girl, Klimek responded: “I thought you were older. . . . I remember exactly. I know exactly who you are. I remember you. We talked, it was nice.” These statements show that Klimek remembered I.K.-W. Therefore, the imposition of strict liability was proper; the district court did not abuse its discretion by denying Klimek’s request to present the mistake-of-age defense and related jury instruction.

Affirmed.