ORIGINAL
(e-filed)

20080156

FILED
IN THE OFFICE OF THE
CLERK OF SUPREME COURT

OCT 30 2008

IN THE SUPREME COURT
STATE OF NORTH DAKOTA

The State of North Dakota, Plaintiff and Appellee, vs. Ryan Ray Corman, Defendant and Appellant.	)))))))))	STATE OF NORTH DAKOTA Supreme Court No. 20080156 District Court No. 07-K-01498

ON APPEAL FROM CRIMINAL JUDGMENT
FROM THE DISTRICT COURT
FOR THE NORTHEAST CENTRAL JUDICIAL DISTRICT
GRAND FORKS COUNTY, NORTH DAKOTA
THE HONORABLE JOEL D. MEDD, PRESIDING.

BRIEF OF APPELLEE

Carmell F. Mattison (06052)
Assistant States Attorney
Grand Forks County
P.O Box 5607
Grand Forks, ND 58206
(701) 780-8281

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Paragraphs

NORTH DAKOTA STATE CASES

NORTH DAKOTA STATE STATUTES & RULES

STATEMENT OF THE ISSUES

I. Whether there was sufficient evidence to support the Defendant's conviction on the Contributing to the Delinquency of a Minor charge.

II. Whether the District Court was correct by requiring the Defendant to register as a sex offender.

STATEMENT OF THE CASE

[1] Ryan Ray Corman, (hereinafter Defendant), appeals from a judgment of criminal conviction in the District Court of Grand Forks County. Defendant was charged with Contributing to the Delinquency of a Minor on June 25, 2007, in violation of N.D.C.C. § 14-10-06 arising from the Defendant's conduct whereby he provided a 15 year old juvenile male with pornographic magazines and DVDs. Appellant's Appendix at 4. A bench trial was held and the Defendant was convicted on March 6, 2008. Trial Transcript (hereinafter "Trial Tr."), p. 245, March 6, 2008. Notice of Appeal was entered on June 24, 2008.

STATEMENT OF THE FACTS

[2] The Defendant in this case, Ryan Ray Corman, and the victim (hereinafter R.) have known each other since 2003. Trial Tr., p. 51. R.'s mother did arrange at one time for the Defendant to be an informal role model for R. Id. R.'s father had recently been sent to prison, leaving a void for a male role model. Id. Initially the relationship consisted of "big brother" activities, such as looking at cars. Id. However, in late 2006, R.'s mother became concerned about the Defendant purchasing expensive gifts for R. The concern became even more severe, when R. began to bring home pornographic materials after visits with the Defendant. Id. at 51, 53.

[3] The pornographic materials included DVDs and magazines that depicted full nudity, oral sex, and vaginal sex. Id. at 221. R.'s mother testified to an incident where the Defendant brought over a bag and left it for R. Id. at 54. When R.'s mother inquired about the contents, R. showed her the material, which included magazines such as "Hustler" and "Barely Legals." Id. at 55. R. was fifteen at the time. Id. R.'s mother also found pornographic DVDs during the course of the relationship between R. and the Defendant. Id. at 58. R.'s mother testified that R. told her he had never taken the materials from the Defendant, rather, it was the Defendant who had given them to R. Id. at 72. When R.'s mother discovered R. had these materials, she ordered them to be destroyed or confiscated them. Id. at 84. She confronted the Defendant about supplying her son with pornographic materials, but the Defendant denied the allegation. Id. at 58.

[4] R. testified that the Defendant purchased the pornographic material for him. Id. at 101. R. said the Defendant would drive him to the Plain Brown Wrapper in Grand

Forks, and R. would stay in the car while the Defendant would go inside to purchase pornography. Id. at 101-02. The Defendant would then hand over the material to R. Id. at 102. The pornography included magazines and DVDs. Id. at 103.

[5] R testified that pornography was kept at the Defendant's house and that the Defendant showed him where it was and allowed him to view it. Id. at 140-41. In addition, R. testified that the Defendant watched him take the pornography from his home, and did not object. Id. at 141-42. R. eventually tried to end the relationship about March of 2007. Id. at 104. However, the Defendant continued to attempt to contact R. and R.'s mother after they told him the relationship was over. Id. at 60, 112.

[6] The Court found the exhibits entered into evidence to be pornographic material. Id. at 237. The Court also went on to find the Defendant guilty of Contributing to the Delinquency of a Minor by purchasing pornography for R. Id. The Defendant has previously been convicted of child molestation in Indiana. Transcript of Sentencing (hereinafter "Tr. Sent.") p. 38-39, June 24, 2008

[7] At sentencing, the judge took into account the presentence investigation report in reaching a decision. Tr. Sent., p. 37. The court found persuasive the evaluation conducted by Dr. Newberry that recommended the Defendant register as a sexual offender. Id. at 38. Additionally, the court found that the Defendant had exhibited predatory conduct in the circumstances surrounding his conviction. Id. During the trial the court had heard testimony that often an individual lures a victim and breaks down inhibitions by sharing pornography. Trial Tr., p. 23. Further, the court looked at N.D.C.C. § 12.1-32-15(4), which provides guidance on predatory conduct. Tr. Sent., p. 38. Weighing the disparity in age of the victim and the Defendant, the trust that had been

built in their relationship, and the mental state of the Defendant, his conduct was found to be predatory. Id.

[8] Noting the previous child molestation conviction and the continual use of alcohol by the Defendant which Dr. Newberry thought presented a potential dangerous situation, the court sentenced the Defendant to one year in the Grand Forks County Correctional Center. Id. Six months of the sentence was suspended. Id. The Defendant filed a Notice of Appeal on June 24, 2008.

ARGUMENT

I. SUFFICIENT EVIDENCE WAS PROVIDED TO THE COURT TO SUPPORT THE DEFENDANT'S CONVICTION ON THE CONTRIBUTING TO THE DELINQUENCY OF A MINOR CHARGE.

[9] N.D.C.C. § 14-10-06(1) provides in pertinent part, "Any individual who by any act willfully encourages, causes, or contributes to the delinquency or deprivation of any minor is guilty of a class A misdemeanor." The trial court in this case found that, "beyond a reasonable doubt that Mr. Corman [Defendant] purchased them [pornographic materials] from the Brown Paper Wrapper (sic) and gave them, furnished them to the minor which constitutes contributing to the delinquency of a minor." Trial Tr., p. 237.

[10] The Defendant claims the evidence in this case was insufficient to support a guilty verdict. Appellant's Brief (hereinafter App. Br.), p. 9. The standard of review on this issue is clear and well-settled:

> When we review a challenge to the sufficiency of the evidence, we only consider the evidence and reasonable inferences most favorable to the verdict to determine if there is sufficient evidence to warrant a conviction. A conviction rests upon insufficient evidence only when, after reviewing the evidence in the light most favorable to the prosecution and giving the prosecution the benefit of all inferences reasonably to be drawn in its favor, no rational fact finder could find the defendant guilty beyond a reasonable doubt. We do not weigh conflicting evidence or judge witness credibility.
> State v. Bertram, 2006 ND 10, ¶5, 708 N.W.2d 913 (citations omitted).

[11] As indicated in State v. Kunkel, 548 N.W.2d 773 (N.D. 1996), when reviewing the sufficiency of the evidence to convict all reasonable inferences are drawn in favor of the State. In the present case, there was sufficient evidence presented to find the defendant guilty of contributing to the delinquency of a minor.

[12] Sgt. William Macki testified in this case. Sgt. Macki is assigned to the Criminal Investigations Bureau and has been in law enforcement for over 14 years. Trial

Tr., p 18. Sgt. Macki investigated two complaints that were filed in March and April of 2007. Id. at 19. The March report involved six DVD's that were provided to R. in December of 2006. Id. at 21. These DVD's depicted hard core pornographic videos including male and female sex and female/female sex, and this included ejaculation. Id. The videos contained full nudity, oral and vaginal sex. Id. at 22. Sgt. Macki testified that through his investigation he learned that R's mother had seen a bag that the defendant gave her her son. Id. R's mother grabbed the bag from her son and found the DVD's as well as pornographic magazines. Id. These DVD's were received into evidence. Id. at 12-13. Sgt. Macki interviewed R and R indicated that the defendant purchased the pornographic material for him from the Plain Brown Wrapper. Id. When Sgt. Macki was questioning the defendant on conversations he had with R. about purchasing pornography, the defendant admitted "he may have asked me." Id. at 31. Additionally, Sgt. Macki testified that during his interview with the defendant, the defendant did change his answers or his statements and that the conversation was fairly unconvincing. Id. at 35-36.

[13]The Court further heard testimony from R's mother, Karyn Stradel. Ms. Stradel testified that R started bringing home pornographic materials after the summer of 2006. Id. at 53. Ms. Stradel testified that R. told her that the defendant gave the material to him. Id. In fact, Ms. Stradel testified that one evening the defendant brought over a paper bag and said that he had something for R. Id. at 54. Inside the bag were pornographic magazines, to include Hustler and Barely Legal. Id. at 55. Additionally, Ms. Stradel testified that the six DVD's that were received into evidence were the movies that the defendant gave to R. Id. at 56.

[14] The juvenile, R. testified as well. R. testified that he recognized the six DVD's that were received into evidence as the ones the defendant gave him. Id. at 101. R. testified that the defendant drove him to the Plain Brown Wrapper and purchased them while R. waited in the car. Id. The defendant purchased these materials for him once a month between August of 2006 and December of 2006. Id. at 102-03.

[15] The juvenile, R., and his mom never wavered in their reports and testimony regarding the fact that it was the Defendant who provided R. the pornography.

[16] The defendant also testified in the case and denied that he ever showed pornographic materials to R. Id. at 172. The judge was presented with this opposing testimony concerning the actions of the Defendant. It was the province of the Court to weigh conflicting evidence and judge the credibility of the witnesses. The Court, arguably, believed R., R.'s mother, and law enforcement involved and found the Defendant guilty of contributing to the delinquency of a minor. The North Dakota Supreme Court does not weigh conflicting evidence. State v. Buchholz, 2006 ND 227, ¶20, 723 N.W.2d 534.

[17] After reviewing the evidence in the light most favorable to the State and giving the prosecution the benefit of all inferences reasonably to be drawn in its favor, a rational factfinder could have concluded the defendant contributed to the delinquency of a minor by providing pornographic materials to a 15 year old juvenile

II. THE DISTRICT COURT WAS CORRECT TO REQUIRE THE DEFENDANT TO REGISTER AS A SEX OFFENDER IN ACCORDANCE WITH N.D.C.C. § 12.1-32-15.

A. Standard of Review

[18] The Defendant states that the standard of review is "obvious error" which is

the standard pursuant to N.D. R. Crim. P. 52(b) (App. Br., p. 10). The Defendant states that this standard may be applied when "a claimed error that was not brought to the district court's attention..." Id. The Defendant does not make clear what was not brought to the district court's attention and why this is the standard that should apply. Regardless, the obvious error standard is a high standard for the Defendant to overcome. The burden is upon the defendant to show the alleged error was prejudicial. State v. Keener, 2008 ND 156, ¶16, 755 N.W.2d 462. An alleged error is not an obvious error unless there is a clear deviation from an appropriate legal standard under current law. Id. An obvious error will only be found "in exceptional circumstances when the defendant has suffered a serious injustice." Id.

[19] Perhaps the more appropriate standard of review would be that which was articulated in State v. Magnusson, 1997 ND 228, ¶23, 571 N.W.2d 642. "Appellate review of a criminal sentence is generally confined to whether the court acted within the sentencing limits prescribed by statute, or substantially relied upon an impermissible factor. A court is vested with a wide range of discretion in sentencing." Id. (citations omitted). Regardless of which standard is applied, the district court in this case was well within its purview when it ordered the Defendant to register as a sex offender.

B. Merit of the District Court's Order to Defendant to Register as a Sex Offender

[20] During the sentencing phase of this case, the court found that the Defendant was guilty of a crime against a child pursuant to N.D.C.C. § 12.1-32-15(2)(d) and could therefore be made to register as a sex offender. Tr. Sent., p. 38. The state concedes that the statutory definition of a crime against a child in N.D.C.C. § 12.1-32-15(1)(a) does not support sex offender registration by the Defendant pursuant to § 12.1-32-15(2)(d)

[21] However, the court correctly found the Defendant must register as a sex offender pursuant to N.D.C.C. § 12.1-32-15(2)(e). This section provides that an individual can be made to register as a sex offender if he:

> Has pled guilty or nolo contendere, been found guilty, or been adjudicated delinquent of any crime against another individual which is not otherwise specified in this section if the court finds the individual demonstrated mental abnormality or sexual predatory conduct in the commission of the offense and therefore orders registration for the individual.

N.D.C.C. § 12.1-32-15(2)(e).

[22] The Century Code defines "predatory" as "an act directed at a stranger or at an individual with whom a relationship has been established or promoted for the primary purpose of victimization." N.D.C.C. § 12.1-32-15(1)(d). The Defendant argues that the trial court did not establish "an intent to victimize the child." However, the facts presented during trial provided more than enough evidence for the court to arrive at the conclusion that the Defendant's conduct was predatory. The Defendant had established a relationship with the child, he drove the child to a pornography store and had the child wait in the car while the Defendant went to go buy him pornography. Trial Tr., p. 101-02. Additionally, the Defendant dropped pornographic materials off at the home of the victim. Id. at 54. Sergeant Macki testified that he is the coordinator for Internet Crimes Against Children Task Force. Trial Tr., p. 24. Sergeant Macki testified regarding the type of things an individual will do to lure a victim. Id. at 23. He testified that they foster a relationship with the Juvenile and oftentimes pornographic photos or video clips are exchanged and/or requested from the minor. Id. This systematically breaks down or reduces the inhibitions of the minor. Id. at 23-24. These actions, coupled with Dr. Newberry's findings, the fact that the Defendant has a prior child molestation conviction,

and testimony provided at trial that often predators will share pornography to break down inhibitions, gave ample evidence to the court to find predatory conduct within the definition of the statute.

[23] Additionally, the Defendant claims that the trial court did not consider the motive of the Defendant as required by N.D.C.C. § 12.1-32-15(4). This statute pertinently provides in part:

> In its consideration of mental abnormality or predatory conduct, the court shall consider the age of the offender, the age of the victim, the difference in ages of the victim and offender, the circumstances and motive of the crime, the relationship of the victim and offender, and the mental state of the offender. The court may order an offender to be evaluated by a qualified counselor, psychologist, or physician before sentencing.

[24] N.D.C.C. § 12.1-32-15(4). It is the States position that the defenses argument is unconvincing. The trial in this case was a bench trial, and as the finder of fact, the judge heard all the testimony during trial. Additionally, the Judge considered the sex offender pre-sentence investigation, which included the testing and evaluations completed by Dr. Newberry, Psychologist with Northeast Human Service Center. Dr. Newberry's report and testing clearly supports predatory conduct that was grooming behavior for further offending. This information was considered by the Court in determining an appropriate sentence. This information clearly supported the requirement to register pursuant to N.D.C.C. § 12.1-32-15(4). In this case, there is nearly a thirty year disparity in age between the defendant and the victim, the act was directed at an individual with whom a relationship had been established, the defendant gave the victim porn and had the victim living with him. This, in conjunction with the

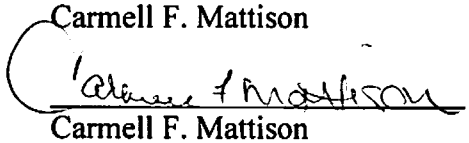
Defendant's past conviction of child molestation and continued alcohol, were sufficient to assist the court in considering the Defendant's conduct predatory.

CONCLUSION

[25] Therefore, the State respectfully requests this Court affirm the Defendant's conviction and sentence to register as a sex offender.

DATED this 30th day of October, 2008.

Carmell F. Mattison



Carmell F. Mattison
Assistant States Attorney
ND ID#06052
P.O. Box 5607
Grand Forks, ND 58206

IN DISTRICT COURT, GRAND FORKS COUNTY, NORTH DAKOTA

State of North Dakota,

Plaintiff,

v

Ryan Ray Corman,

Defendant.

AFFIDAVIT OF SERVICE
BY E-MAIL
Court No. 18-07-K-01498/001, 18-07-K-01498/002
SA#102477

STATE OF NORTH DAKOTA)
) SS
COUNTY OF GRAND FORKS)

The undersigned, being of legal age, being first duly sworn deposes and says that on the 30 day of October, 2008, she served via e-mail true copies of the following documents:

BRIEF OF APPELLEE

and that said email was served on the address of:
Mark Tayler Blumer and said e-mail address is: mark_myhrelaw@qwestoffice.net

States Attorney's Office

Subscribed and sworn to before me this 30th day of October, 2008.

Notary Public

jf

ARLENE HERZOG
Notary Public
State of North Dakota
My Commission Expires Dec. 5, 2010