

INDIANA SUPREME COURT

Robert Corbin v. State of Indiana

17 N.E.3d 270 (Ind. 2014) · No. No. 75S03-1401-CR-13 · Decided September 30, 2014

SUMMARY

The Indiana Supreme Court affirmed the trial court’s refusal to dismiss charges of attempted child seduction against a teacher accused of making sexual solicitations to a sixteen-year-old student through Facebook. The Court held that the charging documents adequately alleged the statutory elements and that dismissal was not required at the charging stage.

CASE DETAILS

COURT	Indiana Supreme Court
WRITING FOR THE COURT	Per Curiam
JURISDICTION	Indiana
DECIDED	September 30, 2014
DOCKET	No. 75S03-1401-CR-13
DISPOSITION	affirmed
PROCEDURAL POSTURE	Interlocutory appeal from the denial of a motion to dismiss two attempted-child-seduction charges, accepted after the Indiana Supreme Court granted transfer from the Indiana Court of Appeals.
STANDARD OF REVIEW	The denial of the motion to dismiss was reviewed for abuse of discretion, with the facts alleged in the charging document taken as true.
PRECEDENTIAL VALUE	Published Indiana Supreme Court opinion
PARTIES	Robert Corbin v. State of Indiana

TOPICS

- criminal procedure
- interlocutory appeal
- statutory interpretation
- appellate procedure
- standard of review

PRACTICE AREAS

- criminal law
- criminal procedure
- appellate procedure
- statutory interpretation

QUESTIONS PRESENTED

1. Whether the charging document sufficiently alleged that Corbin's online communications constituted a substantial step toward the commission of child seduction.
2. Whether the trial court was required to dismiss the attempted-child-seduction charges because the alleged solicitation was not aimed at the immediate commission of the crime.

HOLDINGS

1. The charges sufficiently alleged the statutory elements of attempted child seduction and were adequate to survive a motion to dismiss at the charging stage.
2. The court declined to hold at the charging stage that Corbin's alleged online requests could not constitute a substantial step merely because they contemplated future conduct or were made outside the student's physical presence.

KEY QUOTATIONS

“In short, the charges match the statutory elements and are sufficient to survive a motion to dismiss at this time.” (at 3)

“At this point, we simply cannot say that dismissal is required and we conclude there are enough unanswered questions to affirm the trial court’s denial of the motion to dismiss.” (at 3)

FACTUAL BACKGROUND

Robert Corbin, a teacher and coach, communicated on Facebook with a sixteen-year-old student. He asked the student to address his sexual arousal and to leave the house after the adults were asleep so that he could pick the student up. The next day, he asked about the size of the student's breasts and again asked the student to leave the house so he could see them. Corbin was charged with two counts of attempted child seduction.

PROCEDURAL HISTORY

The Starke Circuit Court denied Corbin's motion to dismiss the charges but certified the issue for an interlocutory appeal. The Indiana Court of Appeals accepted the appeal and reversed, holding that the alleged internet solicitations did not constitute a substantial step toward child seduction. The Indiana Supreme Court granted transfer, vacated the Court of Appeals' decision, affirmed the trial court's denial of dismissal, and remanded for further proceedings.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The case was remanded to the trial court for further proceedings on the attempted-child-seduction charges.

CASES CITED

- Ward v. State, 528 N.E.2d 52 (Ind. 1988)

- Corbin v. State, 999 N.E.2d 70 (Ind. Ct. App. 2013)
- Corbin v. State, 1 N.E.2d 149 (Ind. 2014) (table)

OPINION

PER CURIAM.

ATTORNEY FOR APPELLANT ATTORNEYS FOR APPELLEE Nicholas T. Otis Gregory F. Zoeller LaPorte, Indiana Attorney General of Indiana Justin F. Roebel Deputy Attorney General Indianapolis, Indiana

In the Indiana Supreme Court Sep 30 2014, 3:42 pm No. 75S03-1401-CR-13 ROBERT CORBIN, Appellant (Defendant below), v. STATE OF INDIANA, Appellee (Plaintiff below).
 Appeal from the Starke Circuit Court No. 75C01-1204-FD-72 The Honorable Kim Hall, Judge On Petition To Transfer from the Indiana Court of Appeals, No. 75A03-1209-CR-402
 September 30, 2014 Per Curiam.

This interlocutory appeal challenges the trial court’s refusal to dismiss charges of attempted child seduction. We affirm the trial court. The allegations are that Robert Corbin, a teacher and coach, communicated via an internet site (Facebook.com) with a sixteen-year-old student; on one day, he asked the student to “take care of” his sexual arousal and sneak out of the house after the adults were asleep so Corbin could drive over and pick up the student, and the next day, Corbin inquired about the size of the student’s breasts and again asked the student to sneak out so he could see them.

Corbin was charged with two counts of attempted child seduction. A teacher who engages in touching or fondling a student age sixteen to eighteen years of age with the intent to arouse or satisfy the sexual desires of the teacher or the student commits “child seduction,” a class D felony, though “solicitation” of a student of that age, without more, is not a crime under the child solicitation statute.

See Ind. Code §§ 35-42-4-6 (child solicitation) & 7 (child seduction). As relevant here, a person “attempts” to commit a crime when, acting with the culpability required for commission of the crime, he engages in conduct that constitutes a “substantial step” toward commission of the crime. See I.C. § 35-41-5-1 (2008). Relying primarily on Ward v. State, 528 N.E.2d 52 (Ind.

1988), Corbin moved to dismiss the charges on grounds the online solicitation was not aimed at the “immediate commission of a crime.” (Appendix, p. 18.) See I.C. § 35-34-1-4(a)(5) (specifying that a trial court may dismiss charges when “the facts stated do not constitute an offense”).

The trial court denied Corbin’s motion to dismiss but certified the issue for an Appellate Rule 14(B) interlocutory appeal, which the Court of Appeals accepted. Reviewing for an abuse of

discretion and taking the facts alleged in the charging document as true, the Court of Appeals reversed the trial court. See *Corbin v. State*, 999 N.E.2d 70, 80 (Ind. Ct. App.

2013), vacated. The Court of Appeals concluded that as a matter of law, the internet solicitations did not constitute a substantial step toward the crime of child seduction because Corbin's requests were simply an invitation to the student, not the required "urging" or "persuasion" discussed in *Ward*, and in any event because the requests were not made in the student's presence, the student was never in a position to submit to the solicitation so the requests related to future conduct, not the immediate commission of a crime.

We granted transfer of jurisdiction, *Corbin v. State*, 1 N.E.2d 149 (Ind. 2014) (table), and heard oral argument. 2 In *Ward*, this Court addressed the question whether solicitation of a child may suffice for conviction of attempted child molesting. 528 N.E.2d at 52.

We noted, as stated in the Court of Appeals opinion, that what constitutes an attempt offense in the area of sex offenses against children can, on occasion, be determined as a matter of law, but often, the question involves subtle distinctions in behavior and the nuance of the context in which the behavior occurs. One difference between Corbin's case and most of the cases cited by the Court of Appeals, including *Ward*, is those cases involved review of a conviction after all of the evidence had been presented.

Corbin's case, by contrast, is in the charging stage, when other evidence, if there is any, is not yet known. And for the most part, the charges against him reflect the language of the seduction statute. At this point, we simply cannot say that dismissal is required and we conclude there are enough unanswered questions to affirm the trial court's denial of the motion to dismiss.

In short, the charges match the statutory elements and are sufficient to survive a motion to dismiss at this time. Having previously granted transfer, we affirm the trial court and remand the case for further proceedings. All Justices concur. 3