

SUPREME COURT OF SOUTH CAROLINA

State v. Green, 397 S.C. 268

724 S.E.2d 664 (2012) · No. No. 27108 · Decided April 4, 2012

SUMMARY

The Supreme Court of South Carolina affirmed Benjamin P. Green's convictions for criminal solicitation of a minor and attempted second-degree criminal sexual conduct with a minor. The court rejected constitutional vagueness and overbreadth challenges to South Carolina's criminal solicitation statute, held that legal impossibility was not a defense where the purported minor was an undercover law-enforcement persona, and found sufficient evidence of specific intent and an overt act. The court also upheld the admission of photographs Green sent during the online conversation.

CASE DETAILS

COURT	Supreme Court of South Carolina
WRITING FOR THE COURT	Justice Beatty; Chief Justice Toal; Justice Pleicones; Justice Kittredge; Justice Hearn
JURISDICTION	South Carolina
DECIDED	April 4, 2012
DOCKET	No. 27108
DISPOSITION	affirmed
PROCEDURAL POSTURE	Green appealed convictions for criminal solicitation of a minor and attempted criminal sexual conduct with a minor in the second degree. The Supreme Court of South Carolina certified the appeal from the Court of Appeals under Rule 204(b) of the South Carolina Appellate Court Rules.
STANDARD OF REVIEW	Constitutional challenges to statutes are reviewed under a presumption of validity, with the challenger bearing the initial burden. The sufficiency of the evidence is viewed in the light most favorable to the State. The admission of photographs and the determination of their relevance and admissibility are reviewed for abuse of discretion. A requested lesser-included-offense charge is required only when evidence supports the lesser offense rather than the greater offense.
PRECEDENTIAL VALUE	published precedential opinion
PARTIES	Benjamin P. Green v. State of South Carolina

TOPICS

criminal procedure

first amendment

overbreadth doctrine

void for vagueness

evidence

PRACTICE AREAS

criminal law

criminal procedure

constitutional law

evidence

statutory interpretation

QUESTIONS PRESENTED

1. Whether South Carolina's criminal solicitation of a minor statute, S.C. Code Ann. § 16-15-342, is unconstitutionally overbroad or vague.
2. Whether the use of an undercover law-enforcement officer posing as a minor creates a legal-impossibility defense to criminal solicitation of a minor or attempted criminal sexual conduct with a minor.
3. Whether the State presented sufficient evidence of specific intent and an overt act to submit attempted criminal sexual conduct with a minor in the second degree to the jury.
4. Whether the trial court abused its discretion by admitting photographs Green sent during the online chat.
5. Whether the evidence supported a jury instruction on attempted assault and battery of a high and aggravated nature as a lesser-included offense.

HOLDINGS

1. Section 16-15-342 is not unconstitutionally overbroad because it is narrowly tailored to prohibit knowing communications with a minor, or a person reasonably believed to be a minor, made with the intent to induce sexual activity or a violent crime, rather than protected speech.
2. Section 16-15-342 is sufficiently precise to provide fair notice and is not unconstitutionally vague; Green also lacked standing to assert a facial vagueness challenge based on conduct to which the statute clearly applied.
3. The use of an undercover officer posing as a minor does not defeat convictions for criminal solicitation of a minor or attempted criminal sexual conduct with a minor. Legal impossibility was unavailable for the solicitation charge by statute and did not defeat the attempt charge because completion of the underlying offense was unnecessary.
4. The evidence was sufficient to submit the attempted CSC charge to the jury because Green specifically intended to engage in sexual activity with a person he believed was fourteen and committed multiple overt acts in furtherance of that intent.
5. The trial court did not abuse its discretion by admitting the photographs because they were relevant to Green's intent and their probative value outweighed their prejudicial effect; any error would also have been harmless.
6. Green was not entitled to an instruction on attempted assault and battery of a high and aggravated nature because the evidence showed an intent to engage in sexual battery, not conduct supporting the lesser offense.

KEY QUOTATIONS

“According to our First Amendment overbreadth doctrine, a statute is facially invalid if it prohibits a substantial amount of protected speech.” (397 S.C. at 277)

“Thus, Green was not required to complete the sexual battery in order to be prosecuted and convicted of the offense.” (397 S.C. at 284)

“Viewing the evidence in the light most favorable to the State, we conclude the trial judge properly denied Green’s motion for a directed verdict as to the charge of attempted CSC with a minor in the second degree.” (397 S.C. at 285)

FACTUAL BACKGROUND

Green, age twenty-seven, initiated an online chat with an undercover investigator using the persona of a fourteen-year-old girl. The conversation became sexually explicit; Green sent two photographs of his penis, expressed that he could show it to her in person, arranged a nighttime meeting at a secluded location, and traveled there. When arrested, he admitted he was there to meet a fourteen-year-old girl, and officers found alcohol, condoms, male-enhancement products, drugs, and directions in his vehicle.

PROCEDURAL HISTORY

Green was indicted and convicted by a jury of criminal solicitation of a minor and attempted criminal sexual conduct with a minor in the second degree after arranging an online meeting with an undercover law-enforcement officer posing as a fourteen-year-old girl. The trial court denied his motions to dismiss and for a directed verdict, admitted photographs he sent during the chat, and declined to charge attempted assault and battery of a high and aggravated nature. The Court of Appeals appeal was certified to the Supreme Court of South Carolina, which affirmed.

DISPOSITION

affirmed

CASES CITED

- State v. Gaster, 349 S.C. 545, 564 S.E.2d 87 (2002)
- State v. White, 348 S.C. 532, 560 S.E.2d 420 (2002)
- Broadrick v. Oklahoma, 413 U.S. 601 (1973)
- United States v. Williams, 553 U.S. 285 (2008)
- Cashatt v. State, 873 So. 2d 430 (Fla. Dist. Ct. App. 2004)
- New York v. Ferber, 458 U.S. 747 (1982)
- United States v. Bailey, 228 F.3d 637 (6th Cir. 2000)
- State v. Ebert, 150 N.M. 576, 263 P.3d 918 (Ct. App. 2011)
- State v. Snyder, 155 Ohio App. 3d 453, 801 N.E.2d 876 (2003)
- City of Beaufort v. Baker, 315 S.C. 146, 432 S.E.2d 470 (1993)

- State v. Albert, 257 S.C. 131, 184 S.E.2d 605 (1971)
- Huber v. S.C. State Bd. of Physical Therapy Exam'rs, 316 S.C. 24, 446 S.E.2d 433 (1994)
- Toussaint v. State Bd. of Med. Exam'rs, 303 S.C. 316, 400 S.E.2d 488 (1991)
- In re Amir X.S., 371 S.C. 380, 639 S.E.2d 144 (2006)
- Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc., 455 U.S. 489 (1982)
- State v. Reid, 383 S.C. 285, 679 S.E.2d 194 (Ct. App. 2009), aff'd, 393 S.C. 325, 713 S.E.2d 274 (2011)
- State v. Dingle, 376 S.C. 643, 659 S.E.2d 101 (2008)
- State v. Sutton, 340 S.C. 393, 532 S.E.2d 283 (2000)
- State v. Curtiss, 138 Idaho 466, 65 P.3d 207 (Ct. App. 2002)
- Hix v. Commonwealth, 270 Va. 335, 619 S.E.2d 80 (2005)
- State v. Weston, 367 S.C. 279, 625 S.E.2d 641 (2006)
- State v. Kornahrens, 290 S.C. 281, 350 S.E.2d 180 (1986)
- State v. Todd, 290 S.C. 212, 349 S.E.2d 339 (1986)
- Vaught v. A.O. Hardee & Sons, Inc., 366 S.C. 475, 623 S.E.2d 373 (2005)
- State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989)
- State v. Knight, 258 S.C. 452, 189 S.E.2d 1 (1971)
- State v. Knoten, 347 S.C. 296, 555 S.E.2d 391 (2001)
- State v. Drayton, 293 S.C. 417, 361 S.E.2d 329 (1987)
- State v. Geiger, 370 S.C. 600, 635 S.E.2d 669 (Ct. App. 2006)
- State v. Fennell, 340 S.C. 266, 531 S.E.2d 512 (2000)
- State v. Drafts, 288 S.C. 30, 340 S.E.2d 784 (1986)