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**IN THE  
COURT OF APPEALS OF INDIANA**

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BLAS GARAY, )  
 )  
 Appellant-Defendant, )  
 )  
 vs. ) No. 49A02-0712-CR-1043  
 )  
 STATE OF INDIANA, )  
 )  
 Appellee-Plaintiff. )

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APPEAL FROM THE MARION SUPERIOR COURT  
The Honorable Robert Altice, Judge  
Cause No. 49G02-0610-FC-197534

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**June 13, 2008**

**MEMORANDUM DECISION - NOT FOR PUBLICATION**

**BAKER, Chief Judge**

Appellant-defendant Blas Garay appeals his conviction for Child Solicitation,<sup>1</sup> a class C felony, challenging the sufficiency of the evidence because the State allegedly failed to prove that he was the individual who engaged in an online chat with detectives posing as a fifteen-year-old girl. Garay also maintains that he should not be punished for his conduct because the evidence merely established that he “could have been fantasizing or role playing with someone online who virtually claimed to be 15 but may have been any age at all.” Appellant’s Br. p. 7. Finding that the evidence was sufficient to support Garay’s conviction, we affirm the judgment of the trial court.

### FACTS

In July 2006, Indianapolis Metropolitan Police Detectives Darin Odier and Shannie Anderson set up a secure computer system to investigate online child solicitation. As part of the investigation, the detectives created a profile on the Yahoo member account of a fifteen-year-old girl named Samantha (Sami) under the user name of Samantha\_dyer61. The detectives included a photo in the profile with what appeared to be a young girl in a cheerleading uniform.

Using the virtual identity, the detectives entered a Yahoo chat room on July 18, 2006. At some point, they received an instant message from “GarayS281.” “Sami” asked for “age, sex, location.” Tr. p. 46. GarayS281 responded, “25/m ss indy, u?” “Sami” responded, “15 f indy.” Id. The parties agreed to exchange photographs, and the detectives forwarded GarayS281 a photo of “Sami.” Id. at 48-50, 55-56. GarayS281 sent “Sami” two photos of

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<sup>1</sup> Ind. Code § 35-42-4-6.

himself, and Detective Odier recognized the man in the photos as Garay. Garay worked as a special deputy for the Marion County Sheriff's Department and his badge number had been S281. The exchange contained explicit language about meeting for sex, and the parties arranged to meet the following day at noon at an Indianapolis residence. However, Garay never appeared at the agreed location.

Thereafter, in October 2006, Detective Odier began a second online child solicitation investigation. On this occasion, Detective Odier created the identity of a fourteen-year-old girl named "Jamie Losh." The profile included a photograph of what appeared to be a young girl. Detective Odier again entered a Yahoo chat room and Garay began sending instant messages to "Jamie." Tr. p. 70. The first message, which was sent around 9:30 p.m. on October 3, 2006, stated, "cute pic, so where in indy do u live?" Id. Detective Odier supplied a location and an online conversation ensued. Explicit language was used, and photographs were again exchanged. During the online conversation, it was determined that Garay's name was associated with the Yahoo account.

Using the name provided by Garay's online profile and the photographs that had been provided, Detective Odier confirmed that Garay was the individual who had participated in the chats. Yahoo personnel later confirmed that the account associated with that screen name belonged to Garay.

On October 12, 2006, Detective Odier executed a search warrant at Garay's residence and seized his computer. Both Garay and his wife were present, and it was determined that

they were the only individuals who lived at the residence. Detective David Kim of the Fishers Police Department conducted a certified forensic examination of the computer and retrieved evidence from the computer that included references to “Sami” and “Jami.”

On October 13, 2006, Garay was charged with two counts of child solicitation. Count I alleged that Garay used a computer network to solicit a child between the ages of fourteen and sixteen on July 18, 2006, and Count II alleged that he engaged in similar conduct on October 3, 2006. Following a two-day jury trial that concluded on September 11, 2007, Garay was found guilty of count I and acquitted on count II. Garay was subsequently sentenced and he now appeals.

#### DISCUSSION AND DECISION

In addressing Garay’s challenge to the sufficiency of the evidence, we will neither reweigh the evidence nor judge the credibility of witnesses. Kuypers v. State, 878 N.E.2d 896, 898 (Ind. Ct. App. 2008), trans. denied. We will affirm a conviction if the probative evidence and reasonable inferences drawn from the evidence could have allowed a reasonable trier of fact to find the defendant guilty beyond a reasonable doubt. Drane v. State, 867 N.E.2d 144, 146-47 (Ind. 2007). A conviction can be supported entirely by circumstantial evidence. Kriner v. State, 699 N.E.2d 659, 663 (Ind. 1998). Circumstantial evidence will be deemed sufficient if inferences may reasonably be drawn that enable the trier of fact to find the defendant guilty beyond a reasonable doubt. Id.

The Child Solicitation Statute, Indiana Code section 35-42-4-6, provides as follows:

- (a) As used in this section, “solicit” means to command, authorize, urge, incite, request, or advise an individual:

...  
(4) by using a computer network . . . ;

...  
to perform an act described in subsection (b) or (c).

...  
(c) A person at least twenty-one (21) years of age who knowingly or intentionally solicits . . . an individual the person believes to be a child at least fourteen (14) years of age but less than sixteen (16) years of age, to engage in:

- a. sexual intercourse;
- b. deviate sexual conduct; or
- c. any fondling or touching intended to arouse or satisfy the sexual desires of either the child or the older person;

commits child solicitation, a Class D felony. However, the offense is a Class C felony if it is committed by using a computer network. . . .

(d) In a prosecution under this section, including a prosecution for attempted solicitation, the state is not required to prove that the person solicited the child to engage in an act described in subsection (b) or (c) at some immediate time.

We also observe that the offense of child solicitation is complete at the time of the utterance, and “the urging to perform the act—rather than the performance of the urged act—constitutes child solicitation.” LaRose v. State, 820 N.E.2d 727, 730 (Ind. Ct. App. 2005). Indeed, to commit child solicitation, a person must merely command, authorize, urge, incite, request, or advise a child to commit the act. Kuypers, 878 N.E.2d at 899.

In this case, the evidence established that the computer used to engage in the online conversations was seized from Garay’s residence. Tr. p. 85-90, 93-94. The chat room exchanges were conducted with Garay’s screen name, he had the opportunity to engage in the conversations, and he forwarded photographs of himself to “Sami” during the exchange. Id. In light of this evidence, it was reasonable for the jury to conclude that Garay was the individual who engaged in the online conversations. In essence, Garay’s argument that the

State failed to prove that he was the individual who communicated with “Sami” is a request that we reweigh the evidence—a practice in which we do not engage when evaluating the sufficiency of the evidence.

Garay also argues that he is “being impermissibly punished for his sexual fantasies,” appellant’s br. p. 14, inasmuch as the State failed to prove that he committed some act in addition to the online conversation. Notwithstanding Garay’s contention, we note that the defendant in Kuypers argued that “because the conversation did not include details, he [was] impermissibly being punished for his thoughts.” 878 N.E.2d at 899. In rejecting that claim, we observed that “Kuypers did more than fantasize about having sex with a fifteen-year-old girl; he sought one out on the Internet, described his fantasy in detail, and suggested that they meet in person. Thus, he acted.” Id. This is precisely what occurred in this instance, in that Garay elicited personal information from an individual whom he thought was a fifteen-year-old girl regarding her age, demographics, and other characteristics. Garay also described his fantasies, used explicit sexual language, and expressed the desire that the two meet in person and engage in sexual activity. Thus, Garay “acted” and his claim fails.

The judgment of the trial court is affirmed.

RILEY, J., and ROBB, J., concur.