

MEJAK V. GRANVILLE: LURING STATUTE APPLIES ONLY WHEN ACTUAL MINOR OR PEACE OFFICER IS INVOLVED

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INTRODUCTION

Arizona Revised Statutes section 13-3554 defines the crime of “Luring a minor for sexual exploitation.”¹ Subsection A provides that a person commits “luring” by “offering or soliciting sexual conduct with another person knowing or having reason to know that the other person is a minor.”² Subsection B adds that the defendant cannot claim as a defense “that the other person was a peace officer posing as a minor.”³ In *Mejak v. Granville*, a unanimous Arizona Supreme Court held that a person does not commit the crime of luring when the person lured was neither a minor nor a peace officer posing as a minor.⁴

I. FACTUAL AND PROCEDURAL BACKGROUND

In April of 2003, petitioner Jeremy Mejak participated in an online “chat” discussion with a person he believed to be a 13-year-old girl.⁵ He made arrangements with the girl to meet at a certain location to engage in sexual conduct.⁶ When he arrived at the location, he was confronted by a crew of cameramen from a local TV station.⁷ The girl he believed he was chatting with was in fact a local reporter investigating how the Internet can be used to lure minors for engaging in sexual conduct.⁸ The TV station then gave the video tapes and transcripts of the online conversations to the police.⁹ A grand jury indicted Mejak for luring under Arizona Revised Statutes section 13-3554.¹⁰

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1. ARIZ. REV. STAT. ANN. § 13-3554 (2007).
 2. *Id.* § 13-3554(A).
 3. *Id.* § 13-3554(B).
 4. 136 P.3d 874, 875 (2006).
 5. *Id.*
 6. *Id.*
 7. *Id.*
 8. *Id.*
 9. *Id.*
 10. *Id.*

Mejak filed a motion to dismiss his case.¹¹ He argued that because the person he lured was neither a minor nor a peace officer, he did not commit a crime under the statute.¹² The superior court denied this motion, finding it no defense that the person lured was not a minor.¹³ Instead it noted that the statute intended to “criminalize the offer of sexual conduct with a person a Defendant believes to be a minor.”¹⁴ The court of appeals declined jurisdiction of Mejak’s motion for special action without comment.¹⁵

The Arizona Supreme Court granted Mejak’s petition for review, noting the statewide importance of the issue.¹⁶ For purposes of the proceedings with the Arizona Supreme Court, Mejak admitted to the facts found by the grand jury.¹⁷

II. THE ARIZONA SUPREME COURT’S DECISION

Justice Ryan delivered the unanimous decision of the court.¹⁸ The court held that when the person lured is neither a minor nor a peace officer, the defendant cannot be charged with luring.¹⁹ After determining that the superior court erred in denying Mejak’s motion to dismiss, the Arizona Supreme Court vacated the order and remanded the case to the superior court with an order to dismiss the indictment.²⁰ In its opinion, the court used the text of the statute to support its conclusion.²¹ It then explained why the State’s arguments failed and why the indictment failed as a matter of law.²²

A. Plain Text of the Statute

Deeming the issue in this case a matter of statutory interpretation, the court reviewed the superior court’s decision *de novo*.²³ The court began its interpretation with an analysis of the statutory language.²⁴ According to the court, the statutory text best indicates the intent of the legislature.²⁵ The rules of statutory interpretation require the court to give effect to every provision in the statute and to not render any provision “meaningless, insignificant, or void” by its interpretation.²⁶

11. *Id.*

12. *Id.*

13. *Id.* The superior court based its ruling on *State v. Carlisle*, 8 P.3d 391, 395 (Ariz. Ct. App. 2000). See *Mejak*, 136 P.3d at 875.

14. *Mejak*, 136 P.3d at 875 (quoting the superior court).

15. *Id.*

16. *Id.*

17. *Id.* at 875 n.2.

18. *Id.* at 875.

19. *Id.*

20. *Id.* at 878.

21. *Id.* at 875–76.

22. *Id.* at 876–78.

23. *Id.* at 875–76.

24. *Id.* at 876.

25. *Id.*

26. *Id.*

Arizona Revised Statutes section 13-3554 states:

A. A person commits luring a minor for sexual exploitation by offering or soliciting sexual conduct with another person knowing or having reason to know that the other person is a minor.

B. It is not a defense to a prosecution for a violation of this section that the other person was a peace officer posing as a minor.

C. Luring a minor for sexual exploitation is a class 3 felony, and if the minor is under fifteen years of age it is punishable pursuant to § 13-604.01, subsection I.²⁷

The court concluded that, in order for a person to have committed the crime of luring, the language plainly “requires that the person lured be a minor or a peace officer posing as a minor.”²⁸ An overview of each subsection supports this conclusion.²⁹ The court emphasized subsection A’s use of the phrase “is a minor,” which suggested to the court that the person lured must be an actual minor.³⁰ The court reasoned that when one reads the defense in subsection B in conjunction with subsection A, the crime requires that *unless* the person lured is a peace officer, he or she must be a minor.³¹ Furthermore, the court noted that the penalty provision in subsection C uses the phrase “the minor,” again indicating that the person lured must be an actual minor.³²

B. The State’s Arguments

The State raised two arguments to oppose the dismissal of Mejak’s claim: First, the plain language of the statute allows Mejak to be charged,³³ and second, the crime amounts to a preparatory offense and Mejak’s conduct satisfied all of the elements of the crime.³⁴ The court disagreed with both of these arguments based on the language of the statute.

In its first argument, the State equated the language of subsection A, “having reason to know,” with “believing” that the person is a minor.³⁵ The court disagreed with this interpretation and discussed the differing meanings of *believing* something, having *knowledge* of something, or having *reason to know* that something is true.³⁶ In a footnote, the court recognized the importance of this distinction by pointing out that, under the State’s interpretation, a defendant could

27. ARIZ. REV. STAT. ANN. § 13-3554 (2007). Arizona Revised Statutes section 13-604.01 provides for sentencing for Dangerous Crimes Against Children.

28. *Mejak*, 136 P.3d at 876.

29. *See id.*

30. *Id.*

31. *Id.*

32. *Id.*

33. *Id.* at 876–77.

34. *Id.* at 877.

35. *Id.*

36. *Id.*

escape liability by claiming that he did not *believe* someone was a minor when “the surrounding circumstances would reasonably make him aware of that fact.”³⁷

The court also acknowledged that it must avoid the superfluous result reached by the State’s interpretation of the statute.³⁸ If subsection A allowed the State to charge the crime when the lured person was any adult who posed as a minor, then the exception for peace officers in subsection B would be unnecessary.³⁹ In accordance with the doctrine of *expressio unius est exclusio alterius* (the expression of one implies the exclusion of others), the court noted that the State’s interpretation would make subsection B superfluous.⁴⁰ Instead, the legislature recognized a need to include subsection B so that law enforcement could investigate Internet predators.⁴¹

The court further clarified that the State cannot convict a defendant of a completed offense without facts to satisfy each element of the crime, even if the defendant mistakenly believes he has committed the offense.⁴² In a situation of mistaken fact, however, a person’s conduct might allow the State to charge him with an attempt to commit that crime.⁴³

In its second argument, the State equated the crime of luring with a preparatory offense.⁴⁴ The court rejected this, saying that in this case, “the crime is complete when a person offers or solicits sexual conduct with a minor or a peace officer posing as a minor.”⁴⁵ According to Arizona Revised Statutes sections 13-1001 through 13-1006, a person commits a preparatory offense in preparation of committing a crime.⁴⁶ In this case, while luring may lead to other crimes, luring a minor or peace officer posing as a minor for sexual conduct is by itself a completed crime.⁴⁷ Here, Mejak did not lure someone covered by the statute;⁴⁸ therefore, he did not commit a completed offense.⁴⁹

C. *Insufficient Indictment*

Citing *State v. McElroy*,⁵⁰ *State v. Carlisle*,⁵¹ and *State v. Vitale*,⁵² the State rejected Mejak’s defense that the reporter was not a minor and asserted that

37. *Id.* at 877 n.4.

38. *Id.* at 877.

39. *Id.*

40. *Id.*

41. *Id.*

42. *Id.* (citing *State v. McElroy*, 625 P.2d 904 (Ariz. 1981)).

43. *Id.*

44. *Id.*

45. *Id.*

46. *Id.* (citing ARIZ. REV. STAT. ANN. §§ 13-1001 to -1006 (2007), which define the preparatory offenses of attempt, solicitation, and conspiracy).

47. *Id.*

48. *Id.*

49. *Id.* at 878.

50. 625 P.2d 904, 905 (Ariz. 1981).

51. 8 P.3d 391, 394 (Ariz. Ct. App. 2000).

52. 530 P.2d 394, 395 (Ariz. Ct. App. 1975).

“there is no such defense in Arizona.”⁵³ According to the court, however, those cases failed to support the State’s position because they dealt with “attempt” charges.⁵⁴ Here, the State did not charge Mejak with attempt; therefore, these cases did not apply.⁵⁵ In this case, Mejak could not have possibly completed the crime because the reporter was neither a minor nor a peace officer.⁵⁶ Accordingly, the court concluded that the superior court erred when it denied Mejak’s motion to dismiss, as the indictment was insufficient as a matter of law.⁵⁷ The court did note, however, that Mejak could have been charged with *attempt* to lure a minor.⁵⁸

CONCLUSION

The decision in *Mejak v. Granville* effectively limits the instances when a person may be convicted of luring a minor for sexual exploitation, despite the fact that a perpetrator will have the same intent no matter who really sits on the other side of the computer. This decision, however, clearly stands in line with the text of the statute. The language of the statute and the holding of the Arizona Supreme Court require those interested in exposing sexual predators to involve peace officers in their investigations should they want to bring the predators to justice in an Arizona court of law.

53. *Mejak*, 136 P.3d at 877–78.

54. *Id.* at 878.

55. *Id.*

56. *Id.*

57. *Id.*

58. *Id.* at 875 n.1.