

COA Opinion: Criminal jurisdiction exists where Indiana resident's internet communication intended to reach Michigan.

23. March 2011 By Sarah Riley Howard

On March 22, 2011, the Court of Appeals approved for publication an opinion originally released on February 1 in *People v. Larry James Aspy*, No. 294949. This appeal concerned application of MCL 762.2, which the Legislature passed in 2002 to significantly expand common-law criminal jurisdiction in Michigan, to an internet child predator case. Michigan now has statutory territorial jurisdiction where an element of the crime took place in the state, even if there was no intention that the effects of the crime were to be felt there.

In a per curiam opinion, the panel affirmed the trial court's finding of jurisdiction over defendant under MCL 762.2 in a prosecution for child sexually abusive activity and using a computer to commit that offense. Defendant is an Indiana resident who communicated with a person he believed to be a 14-year-old Michigan girl through an internet chat room. Defendant had sexually explicit conversations with the "girl," and made arrangements to pick her up at her home in Michigan on a weekend that she said her mother was gone, to take her camping. When defendant arrived at her home, police arrested him, as the "girl" was actually a volunteer in a sting operation.

In applying MCL 762.2 to matters where not all of the elements of the crime charged took place in Michigan, a trial court is to act as a gatekeeper and determine if the facts as alleged by the prosecution would be legally adequate to confer jurisdiction. The Court of Appeals agreed that the facts as alleged and proven by the prosecution at trial were sufficient to confer jurisdiction for "attempting, preparing, or conspiring to arrange for child sexually abusive activity." The Court noted that defendant had taken several acts within Michigan to attempt to arrange and/or prepare to commit sexually abusive activity with a child under 18, by driving into the state to meet a "girl" and reserving a campsite there to spend the weekend with her.

More significantly, however, as to the offense of using a computer to commit the crime, the Court found there was also jurisdiction, even though there was no evidence that defendant used a computer or smart phone while he was in Michigan. MCL 750.145d(6), criminalizing use of a computer to commit child sexual abusive activity, provides that it is a violation to make a prohibited computer communication that is "... intended to terminate within this state, or is intended to terminate with a person who is in this state." Even though all evidence was that the communications originated elsewhere, the Court held that it was sufficient to confer jurisdiction that defendant intended that the communications terminate in Michigan with a resident of the state.

The panel also rejected defendant's ineffective assistance of counsel argument and the claim that the trial court erroneously held that his alleged belief that he was communicating with an actual adult did not qualify as a matter of law for the affirmative defense that the subject was an emancipated minor.