

**IN THE COURT OF APPEALS OF OHIO
THIRD APPELLATE DISTRICT
ALLEN COUNTY**

STATE OF OHIO,

PLAINTIFF-APPELLEE,

CASE NO. 1-25-69

v.

ALVIN C. EMFINGER,

DEFENDANT-APPELLANT.

**OPINION AND
JUDGMENT ENTRY**

**Appeal from Allen County Common Pleas Court
Trial Court No. 2005-DR-351**

Judgment Affirmed

Date of Decision: September 8, 2026

APPEARANCES:

***Lindsey S. Saltz* for Appellant**

***John R. Willamowski, Jr. and Joshua Carp* for Appellee**

ZIMMERMAN, P.J.

{¶1} Defendant-appellant, Alvin C. Emfinger (“Emfinger”), appeals the November 7, 2025 judgment entry of sentence of the Allen County Court of Common Pleas. For the reasons that follow, we affirm.

{¶2} This case stems from conduct in August and September of 2024, when the fifteen-year-old victim contacted Emfinger—a family acquaintance—on Facebook Messenger to ask for a ride. During the ensuing exchange, Emfinger solicited the victim for a photograph by proposing a cash trade for a “better pic” with “more skin” that would stay “between [them].” (Sept. 24, 2025 Tr. at 15, 21). Made uncomfortable by the messages, C.M. confided in her mother, who then contacted law enforcement to report the incident.

{¶3} On April 17, 2025, the Allen County Grand Jury indicted Emfinger on Count One of attempted illegal use of a minor or impaired person in nudity-oriented material or performance in violation of R.C. 2907.323(A)(1), (B), 2923.02, a third-degree felony, and Count Two of attempted pandering obscenity involving a minor or impaired person in violation of R.C. 2907.321(A)(5), (C), 2923.02, a fifth-degree felony. On June 16, 2025, Emfinger filed a written plea of not guilty.

{¶4} After waiving his right to a jury trial, the case proceeded to a bench trial on September 24, 2025, during which the trial court found Emfinger guilty of Count

One.¹ On November 7, 2025, the trial court sentenced Emfinger to three years of community control and classified him as a Tier II sex offender.

{¶5} Emfinger filed his notice of appeal on November 18, 2025. He raises two assignments of error for our review, which we will discuss together.

First Assignment of Error

The trial court violated Mr. Emfinger's rights to due process and a fair trial when, in the absence of sufficient evidence of the element of nudity, the trial court convicted him of attempted illegal use of a minor in a nudity-oriented material or performance. U.S. Const., amends. V and XIV; Ohio Const., art. I, § 16; Crim.R. 29; R.C. 2907.01(H); R.C. 2907.323(A); R.C. 2923.02. (Trial Tr., pp. 12-21, 53; State's Exhibit 1; State's Exhibit 2, 5:34-7:00; September 24, 2025 Decision, Verdict & Judgment Entry of Conviction).

Second Assignment of Error

The trial court violated Mr. Emfinger's rights to due process and a fair trial when, in the absence of sufficient evidence of the element of attempt, the trial court convicted him of attempted illegal use of a minor in a nudity-oriented material or performance. U.S. Const., amends. V and XIV; Ohio Const., art. I, § 16; Crim.R. 29; R.C. 2907.323(A); R.C. 2923.02. (Trial Tr., pp. 12-21, 27, 64-66; State's Exhibit 1; State's Exhibit 2, 5:34-6:10,,7:55; September 24, 2025 Decision, Verdict & Judgment Entry of Conviction).

{¶6} In his first and second assignments of error, Emfinger argues that his conviction for attempted illegal use of a minor in a nudity-oriented material or performance is based on insufficient evidence. In particular, Emfinger contends that

¹ The State dismissed Count Two prior to trial.

his conviction is based on insufficient evidence because the State failed to prove the essential elements of nudity and attempt.

Standard of Review

{¶7} “An appellate court’s function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of the defendant’s guilt beyond a reasonable doubt.” *State v. Jenks*, 61 Ohio St.3d 259 (1981), paragraph two of the syllabus, *superseded by state constitutional amendment on other grounds*, *State v. Smith*, 80 Ohio St.3d 89 (1997). Accordingly, “[t]he relevant inquiry is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt.” *Id.* “In deciding if the evidence was sufficient, we neither resolve evidentiary conflicts nor assess the credibility of witnesses, as both are functions reserved for the trier of fact.” *State v. Jones*, 2013-Ohio-4775, ¶ 33 (1st Dist.). *See also State v. Berry*, 2013-Ohio-2380, ¶ 19 (3d Dist.) (“Sufficiency of the evidence is a test of adequacy rather than credibility or weight of the evidence.”).

Analysis

{¶8} As an initial matter, the record reveals that Emfinger failed to renew his Crim.R. 29(A) motion at the conclusion of his case-in-chief or at the conclusion of

all the evidence. Generally, to preserve a sufficiency-of-the-evidence challenge for appeal, a defendant who moves for acquittal at the close of the State's case must renew that motion at the conclusion of his or her case-in-chief or at the conclusion of all evidence. *See State v. Hurley*, 2014-Ohio-2716, ¶ 37 (3d Dist.).

{¶9} However, while a jury trial requires strict adherence to the making and renewing of Crim.R. 29 motions to preserve sufficiency arguments, a defendant in an Ohio bench trial is under no obligation to make or renew a Crim.R. 29 motion to preserve the issue for appellate review. *See Sidney v. Alter*, 2014-Ohio-3374, ¶ 9 (3d Dist.) (“In a bench trial, ‘the defendant’s plea of not guilty serves as a motion for judgment of acquittal, and obviates the necessity of renewing a Crim.R. 29 motion at the close of all the evidence.’”), quoting *Dayton v. Rogers*, 60 Ohio St.2d 162, 163 (1979), overruled on other grounds by *State v. Lazzaro*, 76 Ohio St.3d 261, 266 (1996). Instead, the defendant’s plea of not guilty operates as the functional equivalent of a Crim.R. 29 motion and preserves sufficiency-of-the-evidence arguments for appellate review. *See State v. Miller*, 2010-Ohio-5532, ¶ 8 (12th Dist.); *State v. McQuisition*, 2024-Ohio-3011, ¶ 24, fn. 1 (8th Dist.). Accordingly, we will proceed to determine whether the State presented sufficient evidence to support Emfinger’s conviction.

{¶10} Emfinger was convicted of attempted illegal use of a minor or impaired person in nudity-oriented material or performance in violation of R.C.

2907.323(A)(1). That statute provides, in its relevant part, that “[n]o person shall . . . [p]hotograph any minor . . . who is not the person’s child or ward in a state of nudity, or create, direct, produce, or transfer any material or performance that shows the minor . . . in a state of nudity, unless” the material is presented for a bona fide artistic, medical, scientific, educational, or other proper purpose; and the minor’s parents, guardian, or custodian consents in writing. R.C. 2907.323(A)(1). Ohio’s attempt statute provides, in its relevant part, “No person, purposely or knowingly, and when purpose or knowledge is sufficient culpability for the commission of an offense, shall engage in conduct that, if successful, would constitute or result in the offense.” R.C. 2923.02(A).

{¶11} Because Emfinger limits his sufficiency challenge on appeal to the elements of attempt and nudity, our analysis will address only those two elements. Here, Emfinger specifically argues that the State failed to establish the element of attempt because his statements were merely conditional expressions of future intent, rather than a substantial step toward the commission of the offense. Furthermore, he contends that the State failed to establish the element of nudity because his messages did not explicitly request a photograph depicting any of the statutorily enumerated body parts.

{¶12} “[T]he State may establish the elements of a crime with direct or circumstantial evidence.” *State v. Hooper*, 2022-Ohio-2990, ¶ 19 (3d Dist.).

“Likewise, since the intent of a person generally ‘cannot be proven by direct evidence, thus proof of intent may be shown from circumstantial evidence.’” *Id.*, quoting *State v. Cole*, 2011-Ohio-409, ¶ 23 (3d Dist.).

{¶13} “‘Circumstantial evidence’ is the ‘proof of facts by direct evidence from which the trier of fact may infer or derive by reasoning or other facts.’” *State v. Lawwill*, 2008-Ohio-3592, ¶ 12 (12th Dist.), quoting *State v. Wells*, 2007-Ohio-1362, ¶ 11 (12th Dist.). Circumstantial evidence has no less probative value than direct evidence. *State v. Griesheimer*, 2007-Ohio-837, ¶ 26 (10th Dist.). *See also State v. Heinish*, 50 Ohio St.3d 231, 238 (1990) (“This court has long held that circumstantial evidence is sufficient to sustain a conviction if that evidence would convince the average mind of the defendant’s guilt beyond a reasonable doubt.”); “[A]ll that is required of the jury is that it weigh all of the evidence, direct and circumstantial, against the standard of proof beyond a reasonable doubt.” *State v. Miller*, 2016-Ohio-7606, ¶ 61 (8th Dist.), quoting *Jenks*, 61 Ohio St.3d at 272. ““‘Circumstantial evidence is not only sufficient, but may also be more certain, satisfying, and persuasive than direct evidence.’”” *Id.*, quoting *State v. Hawthorne*, 2011-Ohio-6078, ¶ 9 (8th Dist.), quoting *Michalic v. Cleveland Tankers, Inc.*, 364 U.S. 325, 330 (1960).

{¶14} “A “criminal attempt” is when one purposely does or omits to do anything which is an act or omission constituting a substantial step in a course of

conduct planned to culminate in his commission of the crime.” *State v. Group*, 2002-Ohio-7247, ¶ 95, quoting *State v. Woods*, 48 Ohio St.2d 127 (1976), paragraph one of the syllabus. “A ‘substantial step’ requires conduct that is ‘strongly corroborative of the actor’s criminal purpose.’” *Id.*, quoting *Woods* at paragraph one of the syllabus. ““This standard does properly direct attention to overt acts of the defendant which convincingly demonstrate a firm purpose to commit a crime, while allowing police intervention . . . in order to prevent the crime when the criminal intent becomes apparent.”” *Id.*, quoting *Woods* at 132.

{¶15} Emfinger relies heavily on conditional phrasing—specifically his remarks about obtaining a digital payment app—to frame his conduct as mere preparation. However, viewing the evidence in the light most favorable to the State, the record demonstrates a sequence of escalating messages that went beyond abstract thought. *See State v. Williams*, 2024-Ohio-2307, ¶ 38 (3d Dist.). Relevantly, after receiving an ordinary tank-top photograph from the fifteen-year-old victim, Emfinger initiated a request for a “better pic.” (Sept. 24, 2025 Tr. at 15). He then introduced secrecy (stating he could not put the details on Facebook), proposed a financial exchange (“You get cash I get pic”), and explicitly requested an image with “more skin” that would stay “between [them].” (*Id.* at 20-21).

{¶16} A substantial step “need not be the last proximate act prior to the commission of the offense.” *State v. Miller*, 2013-Ohio-3194, ¶ 31 (3d Dist.).

Rather, “[p]recisely what conduct will be held to be a substantial step must be determined by evaluating the facts and circumstances of each particular case.” *Id.*, quoting *State v. Butler*, 2012-Ohio-5030, ¶ 28 (5th Dist.). In the context of R.C. 2907.323(A)(1), the conduct may consist of directing or inducing the minor to create or send the prohibited material. *See State v. Dellifield*, 2018-Ohio-4919, ¶ 44 (3d Dist.) (holding that the attempt was complete the moment the defendant sent text messages directing the minor to produce a prohibited photograph because “the harm was in the asking”); *State v. Lawrence*, 2024-Ohio-4792, ¶ 58-59 (8th Dist.) (finding sufficient evidence of attempt where the defendant asked a minor to expose himself for photos in exchange for money, despite the minor’s refusal).

{¶17} From a sufficiency perspective, Emfinger’s conditional language regarding the digital payment app did not negate the attempt; rather, it merely explained the proposed method of payment for the illicit exchange. That is, Emfinger’s discussion of the digital payment app was not an abstract expression of future intent, but rather part of an active, ongoing negotiation to facilitate the exchange of a photograph that he was presently soliciting. *Compare State v. Brown*, 2019-Ohio-2599, ¶ 19 (9th Dist.) (finding conditional expressions of future intent to be mere preparation when they are *not* paired with any other significant conduct).

{¶18} Therefore, based on the facts presented by this case, we conclude that a rational trier of fact could conclude beyond a reasonable doubt that Emfinger’s

persistent, private solicitation for a more revealing photograph constituted a substantial step strongly corroborative of his criminal purpose. *See, e.g., State v. Radcliff*, 2014-Ohio-3981, ¶ 22 (3d Dist.) (determining that a jury could find a substantial step where the defendant’s overt, circumstantial acts—including physical concealment and a subsequent admission to police—demonstrated her criminal intent). Accordingly, the State presented sufficient evidence to establish the element of attempt beyond a reasonable doubt.

{¶19} Relevant to Emfinger’s second argument, R.C. 2907.01(H) defines “[n]udity” as the showing, representation, or depiction of human male or female genitals, pubic area, or buttocks with less than a full, opaque covering, or of a female breast with less than a full, opaque covering of any portion thereof below the top of the nipple, or of covered male genitals in a discernibly turgid state.” *See State v. Martin*, 2016-Ohio-7196, ¶ 17-18 (holding that the definition of nudity applicable to R.C. 2907.323(A)(1) is the statutory definition in R.C. 2907.01(H), rather than the narrower “lewdness” definition).

{¶20} Here, Emfinger argues the State failed to prove that he requested a photograph depicting any of these specific anatomical areas under the statutory definition of nudity, contending that “more skin” is too vague to satisfy the statute. In support of his argument, Emfinger relies on *State v. Sanchez-Sanchez*, 2022-Ohio-4080 (8th Dist.), to suggest that vague language requires a court to draw

impermissible inferences against the accused. However, *Sanchez-Sanchez* is factually distinguishable. In that case, the Eighth District Court of Appeals evaluated whether vague testimony regarding existing, produced photographs was sufficient to prove those photographs actually depicted statutory nudity. *Id.* at ¶ 43-44. By contrast, no photograph was produced here, and the relevant inquiry is whether a rational trier of fact could infer Emfinger’s intent to solicit a prohibited photograph based on the totality of the circumstances.

{¶21} In making this determination, the trier of fact “can make reasonable inferences from the evidence.” *State v. Johnson*, 2025-Ohio-1009, ¶ 42 (3d Dist.), quoting *State v. Knight*, 2016-Ohio-8134, ¶ 26 (10th Dist.). ““It is permissible for [the trier of fact] to draw inferences from the facts presented to them.”” *Id.*, quoting *Knight* at ¶ 26, quoting *State v. Sanders*, 1998 Ohio App. LEXIS 463, *7 (6th Dist. Feb. 13, 1998). “The weight given to an inference is a question for the trier of fact and will not be disturbed unless it is such that reasonable minds could not reach such a conclusion.” *Sanders* at *7. When determining a defendant’s intent, the trier of fact must look at the “surrounding facts and circumstances,” and this “series of facts and circumstances can be employed by a [trier of fact] as the basis for the ultimate conclusion in a case.” *State v. Suffel*, 2015-Ohio-222, ¶ 13 (3d Dist.).

{¶22} In this case, the trial court—as the trier of fact—was entitled to view the phrase “more skin” within the totality of the circumstances and infer that

Emfinger was seeking a photograph depicting nudity. *See State v. Matthews*, 2015-Ohio-3614, ¶ 5 (6th Dist.) (explaining that when relying on circumstantial evidence, there is no requirement that the evidence be “irreconcilable with any reasonable theory of innocence in order to support a conviction”), quoting *Jenks*, 61 Ohio St.3d at paragraph one of the syllabus.

{¶23} Particularly, the trier of fact could infer that Emfinger was seeking a photograph depicting nudity from the evidence of his rejection of an ordinary photograph depicting the minor in a tank top, his offer of compensation, his refusal to place the details in writing, and his insistence on secrecy. This inference is bolstered by the victim’s testimony that, based on the context of the exchange, she understood Emfinger’s request for a picture with “more skin” to be a request for a nude photograph. (Sept. 24, 2025 Tr. at 15). (*See also* State’s Ex. 1). *See State v. Jennings*, 2025-Ohio-5790, ¶ 18 (7th Dist.) (recognizing that a victim’s statements and understanding of the circumstances are valid evidentiary factors to consider within the totality of the evidence). Indeed, unlike cases where a conviction improperly rests entirely on subjective assumptions, the victim’s understanding here merely corroborates the objective circumstantial evidence of Emfinger’s own messages and subsequent admissions. *Compare In re Hardie*, 2003-Ohio-1388, ¶ 28 (4th Dist.) (reversing a conviction where the state lacked objective evidence and relied exclusively on subjective beliefs to prove intent).

{¶24} Furthermore, during his interview with Detective Matt Woodworth (“Detective Woodworth”) of the Lima Police Department, when Detective Woodworth asked whether Emfinger was trying to get a “naked picture,” Emfinger replied, “Yeah, I may have been initiating that, yes,” and later admitted that he sought a picture with “no shirt on.” (State’s Ex. 2). Nevertheless, Emfinger attempts to recharacterize this exchange by arguing that his affirmative response was merely a delayed response to Detective Woodworth’s subsequent comment about “soliciting her for some skin,” and by highlighting his later claim that he only meant a picture of the minor in a bra. (Appellant’s Brief at 13).

{¶25} However, parsing the cadence of a recorded interview and resolving the credibility of competing, self-serving statements are factual determinations strictly reserved for the trial court. *See State v. Dean*, 2015-Ohio-4347, ¶ 176 (noting that even under a sufficiency standard, resolving the credibility of testimony—inclusive of contradictions or inconsistencies—remains an issue for the factfinder). Because we must view the evidence and all reasonable inferences in the light most favorable to the prosecution, Emfinger’s subsequent narrowing language does not render the State’s evidence legally insufficient. *See State v. Curtis*, 2024-Ohio-4625, ¶ 18 (12th Dist.). Consequently, a rational trier of fact could infer from Emfinger’s messages, the victim’s testimony, and his own admissions to law

enforcement that he was soliciting an image exposing the female breast, providing sufficient evidence to satisfy the statutory element of nudity.

{¶26} Accordingly, viewing the evidence in a light most favorable to the prosecution, we conclude that Emfinger's conviction for the illegal use of a minor in nudity-oriented material or performance is based on sufficient evidence.

{¶27} Emfinger's assignments of error are overruled.

{¶28} Having found no error prejudicial to the appellant herein in the particulars assigned and argued, we affirm the judgment of the trial court.

Judgment Affirmed

MILLER and WALDICK, J.J., concur.

JUDGMENT ENTRY

For the reasons stated in the opinion of this Court, the assignments of error are overruled and it is the judgment and order of this Court that the judgment of the trial court is affirmed with costs assessed to Appellant for which judgment is hereby rendered. The cause is hereby remanded to the trial court for execution of the judgment for costs.

It is further ordered that the Clerk of this Court certify a copy of this Court's judgment entry and opinion to the trial court as the mandate prescribed by App.R. 27; and serve a copy of this Court's judgment entry and opinion on each party to the proceedings and note the date of service in the docket. *See* App.R. 30.

William R. Zimmerman, Judge

Mark C. Miller, Judge

Juergen A. Waldick, Judge

DATED:
/hls