

STATE V. MAXWELL, 361 N.J. Super. 401 (App. Div. 2003).

The following summary is not part of the opinion of the court. Please note that, in the interest of brevity, portions of the opinion may not have been summarized.

We affirm, for the reasons expressed in Judge Marilyn C. Clark's opinion of March 28, 2001, the denial of defendant's motion to dismiss. Defendant may be guilty of aggravated sexual assault and endangering the welfare of minors by virtue of telephone calls to the victims and engaging them in conversations regarding sexual acts.

The full text of the case follows.

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APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2113-01T5

STATE OF NEW JERSEY,
Plaintiff-Respondent,

v.

JAMES L. MAXWELL,
Defendant-Appellant.

Argued June 3, 2003 - Decided June 24, 2003

Before Judges Stern, Coburn and Collester.

On appeal from the Superior Court of New Jersey, Law Division, Passaic County, Indictment No. 99-11-1086-I, whose opinion is reported at ___ N.J. Super. ___ (Law Div. 2001).

Edward A. Jerejian argued the cause for appellant (Jerejian & Jerejian, attorneys; Mr. Jerejian and Rita T. Jerejian, of counsel and on the brief).

Boris Moczula, Assistant Attorney General, argued the cause for respondent (Peter C. Harvey, Acting Attorney General, attorney; Wendy Alice Way, Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Following the denial of his motion to dismiss the indictment and entry of a guilty plea under the plea preservation rule, R. 3:9-3(f), defendant was convicted of aggravated sexual assault of S.M. in June 1999, N.J.S.A. 2C:14-2a(1) (count one), and endangering the welfare of ten other young girls, N.J.S.A. 2C:24-4 (counts five through fourteen). Count two charged attempted aggravated sexual assault on S.M. in September 1999, and counts three and four charged endangering S.M. in June and September, respectively. These three counts were dismissed under the negotiated disposition.

On this appeal, defendant argues that "the trial court erred in denying the motion to dismiss counts one and two of the indictment because N.J.S.A. 2C:14-2a(1) requires physical presence [of the defendant]" and "because the phrase 'upon the actor's instruction' is unconstitutionally vague on its face and as applied." He also argues that "the trial court erred in denying the motion to dismiss counts three through fourteen of the indictment [the endangering counts] because the State did not present any evidence that defendant was in the victims' physical presence."

We reject the arguments, and affirm the denial of defendant's motion to dismiss substantially for the reasons expressed by Judge Marilyn C. Clark in her opinion of March 28, 2001, ___ N.J. Super. ___ (Law Div. 2001). See also State v. Hackett, 166 N.J. 66, 77-81 (2001).

Affirmed.