

Court of Appeals of Ohio,  
Second District, Montgomery County.

**The STATE of Ohio**, Appellee,  
v.  
**TURNER**, Appellant.

Decided Feb. 6, 2004.

BROGAN, Judge.

{¶ 1} After receiving an unfavorable suppression decision, defendant, Kevin A. Turner, pled no contest to charges of attempting to commit unlawful sexual conduct with a minor, importuning, and possession of criminal tools. These charges arose from an Internet “chat” session and certain actions Turner took thereafter.

{¶ 2} On July 15, 2002, Detective Donald Duncan was online, posing as a 14-year-old boy named “Casey.” At the time, Duncan was 45 years old and was using a computer at the Brookville, Ohio Police Department, where he was employed. Turner made the initial contact by asking Casey how he was doing. From there, the conversation progressed to a description of the parties’ relative “statistics,” including ages and penis sizes. After finding out that Casey was 14, Turner asked Casey whether he was “horny.” Pictures were then exchanged, via computer. Duncan sent Turner a picture of a 27-year-old Brookville police officer, taken when the officer was a child. Turner responded by sending a photo that showed Turner semi-nude and in a state of arousal.

{¶ 3} Following the picture exchange, Turner asked Casey whether he wanted to “get naked together” that day. Duncan agreed, and arrangements were made for

Turner to pick Casey up near a community theater in Brookville . . .

{¶ 4} Duncan arranged for backup and went to the scene. . . . After observing the subject for a while, Duncan had an officer in a marked police car make the initial contact.

{¶ 5} Subsequently, Duncan went up to the green car and introduced himself as Detective Duncan with the Brookville Police Department. The individual in the car matched the picture that had been sent to Duncan. When Duncan said that he knew why Turner had come to town, Turner just sat there. Turner then said that he knew he should not have come. . . . During the ride [to the police station], Duncan asked Turner where he was employed, and Turner stated that that was going to be a problem, because he was a minister. [Doh!—TGA].

[...]

{¶ 8} Before trial, Turner filed a motion to suppress. However, after a hearing, in which the above facts were elicited, the trial court overruled the motion to suppress. . . .

[...]

### III

{¶ 42} The third assignment of error is based on Turner’s claim that the conduct of the police constituted . . . unreasonable conduct as a matter of law, requiring per se dismissal of the charges. In this regard, Turner contends that he had an expectation of privacy once he and Duncan left the chat room and conversed “privately” via the Internet. According to Turner, the police were required, at that time, to obtain a warrant, presumably for some sort of wiretap.

{¶ 43} Taking the latter point first, we note that no court order was required because Detective Duncan was a party to the conversation. See *State v. Moller*, 2002 WL

628634, at ¶ 19-27 (wiretaps not required where police are parties to a conversation). In *Moller*, we also held that individuals have no reasonable expectation of privacy in statements they make to unknown individuals over the Internet. We did comment that circumstances may exist, even over the Internet, where individuals may have an expectation of privacy. The examples we used were situations where someone is speaking with a known acquaintance, perhaps using a password or encryption, and where officers defeat the precautions and pose as the known acquaintance. However, this is not such a case.

{¶ 44} Specifically, Duncan was not a known acquaintance, nor did he violate some type of password or encryption Turner used to maintain his privacy. Duncan did testify that when parties make contact in a chat room, a private box opens up so that they can have a conversation only with each other (instant messaging). However, that still did not give Turner an expectation of privacy, since he was chatting with a stranger, not a known acquaintance.

{¶ 45} As an analogy, if Turner called Duncan on a telephone line that the police had established to investigate gambling, Turner would have had no reasonable expectation of privacy concerning the conversation. This would be true even if only Turner and Duncan were parties to the call. In such a situation, Duncan would not be intruding into Turner's home or privacy, because Turner voluntarily chose to call a stranger, and also chose to speak with the stranger over the telephone about illegal matters. In the same vein, Turner chose to initiate conversations with a stranger over the Internet about potentially illegal matters.

[...]

. . . Accordingly, the third assignment of error is without merit and is overruled.