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No. 3-09-0692

Order filed April 6, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2011

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of the 12 th Judicial Circuit
)	Will County, Illinois,
Plaintiff-Appellee,)	
)	No. 06 CM 2886
v.)	
)	
ROBERT J. SANCHEZ,)	The Honorable
)	Rick Mason,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Holdridge and Lytton concurred in the judgment.

ORDER

Held: A defendant's conviction will be upheld where the record does not reveal the trial court considered any improper evidence in finding defendant guilty.

Defendant, Robert J. Sanchez, appeals from his conviction for attempt sexual exploitation of a child. Specifically, defendant argues the trial court considered improper evidence in finding him guilty. We affirm.

FACTS

On July 29, 2009, defendant was charged by information with attempt sexual exploitation of a child (720 ILCS 5/8-4(a),©)(5) (West 2008); 720 ILCS 5/11-9.1(a-5) (West 2008)). Specifically, it alleged that defendant knowingly offered K.M., a child younger than 13, a cellular phone in an attempt to entice her to take off her clothes for the purpose of his sexual arousal or gratification. The following evidence was adduced at defendant's bench trial.

K.M. identified defendant in open court and asserted that she had known him for five to ten years. Defendant owned a cell phone store about a half block from where K.M. lived. K.M. occasionally worked at defendant's store vacuuming, dusting and cleaning windows. Defendant offered K.M. a cell phone, but K.M. told him she would have to ask her mother, Dawn Cecil.

Dawn subsequently came to the store while K.M. was working and told her that she was too young to own a cell phone. Dawn then left the store. Shortly thereafter, defendant pulled K.M. towards the back of the store, into an area not open to customers, and told her that he would give her a cell phone if he could see her "boobs." K.M. testified that defendant then tried to unbutton her shirt. K.M. pushed defendant's hand away and left the store. A few minutes later, K.M. informed her best friend, Sharon, about the incident. Sharon called her mother and informed her about the incident. Sharon's mother told Sharon to call her (Sharon's) stepmother, Tammy Croarkin. K.M. told Tammy what happened and Tammy then informed Dawn. K.M. later spoke to Mary Jane Pluth about the incident at the Child Advocacy Center. The trial court subsequently admitted Pluth's videotaped interview of K.M.

On cross-examination, K.M. denied defendant pulled her to the back of the store. She maintained that she walked to the back of the store to put a phone away and defendant came up

behind her and, while standing behind her, tried to unbutton her shirt and said, “come on, let me see them.” K.M. explained that she told Pluth that the incident occurred on a Tuesday or a Saturday. She denied telling Pluth that she knew defendant because her mother had once bought a cell phone from him or that she would work at the store from 3:30 to 7:00. She denied telling Pluth that the first person she told about the incident was her sister, Samantha. She also denied telling Pluth she told Tammy a couple days after telling her friend, Sharon.

Dawn testified that K.M. is her daughter. When K.M. was 6 or 7, Dawn coached the cheerleaders for the youth football team coached by defendant. When K.M. was 11 years old, she did odd jobs one to three times a week at defendant’s cell phone store. K.M. told Dawn that defendant had a cell phone K.M. could work off or buy. Dawn went to the store and told defendant that her daughter was too young to own a cell phone.

At some later date, Tammy called Dawn and said she needed to talk to her. Tammy then went to Dawn’s apartment and informed her that K.M. told her that defendant grabbed her shirt and tried to unbutton it and said he would give her a cell phone if he could look at “those.” K.M. then told Dawn that defendant pointed at her chest and asked to see “those.” Dawn called the police.

On cross-examination, Dawn recalled that the alleged incident occurred on the same day K.M. told her about it. Dawn stated, however, that she did not visit defendant’s store that day. Instead, the last time she was in defendant’s store was sometime the preceding week.

Tammy testified that she was Sharon’s stepmother. Tammy testified that Sharon approached her one day and stated that she needed to tell her something. Sharon then motioned to K.M., and K.M. told Tammy that “the guy” at the cell phone store offered her a free phone if

he could take a look at her “boobs.” When K.M. said she was scared to tell her mother, Tammy informed Dawn herself.

After taking the matter under advisement, the court noted that “acquittal of the defendant could *** seriously affect[] the fragile psyche of a victim.” The court also noted the following inconsistencies involving K.M.’s testimony: (1) her testifying at trial that she had known defendant for five to ten years versus her telling Pluth that she had known him for approximately one year, (2) her testifying at trial that she worked at the store for 30-60 minutes each time versus her telling Pluth that she worked there about four hours from 3:30 to 7:00 each time, (3) her testifying at trial that the incident occurred in a separate room versus telling Pluth that it occurred in an area of the store that was open to the customers, (4) her testifying at trial that the incident occurred on the same day her mother was in the store versus her mother testifying that she was not in the store that day, and (5) her testifying at trial that she first told Sharon about the incident a few minutes after it occurred versus telling Pluth that she first told her sister, Samantha. The court, however, found that these inconsistencies were minor in nature” and could perhaps be attributed to K.M.’s youth. The court also found the parties’ specific testimony regarding defendant’s conduct consistent and credible. Ultimately, the court found defendant guilty of attempt sexual exploitation of a child and sentenced him to two years’ probation.

ANALYSIS

The sole issue before us is whether the trial court, in finding defendant guilty of attempt sexual exploitation of a child, “erroneously considered *** the adverse impact a not-guilty verdict might have on the complainant.” Defendant calls our attention to the fact there was no evidence presented at trial establishing that defendant’s acquittal would negatively impact K.M.

Thus, defendant argues that the trial court's reliance upon this personal belief was improper because it was outside the record. We disagree on the basis that the record does not confirm defendant's claim that the trial court considered this matter in finding defendant guilty.

At the outset, we note that the State argues that defendant forfeited this issue because he did not raise it in his motion to reconsider sentence, nor did he object to the court's statement at trial. Although the State is correct that defendant forfeited this issue (*People v. Enoch*, 122 Ill. 2d 176, 186 (1988)), defendant asks that we review the issue as plain error under Supreme Court Rule 615(a).

“Under the plain-error doctrine, a reviewing court may consider an unpreserved and otherwise forfeited error when (1) ‘the evidence in the case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence; or (2) where the error is so serious that the defendant was denied a substantial right, and thus a fair trial.’ ” *People v. Willhite*, 399 Ill. App. 3d 1191, 1194 (2010), quoting *People v. McLaurin*, 235 Ill. 2d 478, 489 (2009). However, before we consider application of the plain-error doctrine in the instant case, we must first determine whether any error occurred. *Willhite*, 399 Ill. App. 3d at 1194.

While we recognize that a trial court's deliberations in a bench trial are limited to the evidence presented at trial and any deliberations based on a court's private knowledge or belief violate due process (*People v. Nelson*, 58 Ill. 2d 61, 66 (1974)), we believe the record as a whole illustrates that the court, in finding defendant guilty, did not rely upon the possibility that defendant's acquittal may negatively impact K.M. Instead, the record clearly establishes that the court's guilty finding was based solely upon the fact that it found the specific allegations regarding defendant's conduct, as testified to by K.M., Dawn, and Tammy, consistent and

credible. Specifically, the court stated:

“The defense argues that I should find the defendant not guilty as there are many inconsistencies between the trial testimony and the [videotaped interview] and that the allegations of K.M. are not corroborated and therefore are unreliable and that that is insufficient evidence to convict the defendant.

The State argues, on the other hand, that the evidence taken as a whole is sufficient proof beyond a reasonable doubt.

I have considered both of these arguments and the evidence very carefully. I understand that a conviction can have very serious consequences for the accused, and acquittal of the defendant could also seriously affect the fragile psyche of a victim.

* * *

*** [E]ven though I note some inconsistencies in this evidence, I attribute these inconsistencies to be minor in nature and somewhat a lot of them because the child is so young. I find the basis -- I find the basic evidence particularly the allegations of this incident, to be very consistent and I find the witnesses to be very credible and reliable.

So consequently, based on the totality of this evidence, I find the State has proven beyond a reasonable doubt all of the elements *** of the offense of attempted sexual exploitation of a

child.”

Clearly, defendant has attempted to parse the trial court’s words in an effort to obtain a new trial. Placed in the context of the entire record, however, we find the court did not consider any improper evidence in finding defendant guilty. Because we find the court committed no error, we need not consider defendant’s contention under plain-error analysis.

For the foregoing reasons, we affirm defendant’s conviction.

Affirmed.