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2011 IL App (3d) 100204–U

Order filed August 25, 2011

IN THE APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3–10–0204 Circuit No. 08–CF–1263
ANA E. MATEO,	)	Honorable Richard C. Schoenstedt,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE CARTER delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: In an aggravated criminal sexual abuse case, when evidence of messages sent on the social networking site, Myspace, was properly authenticated, the appellate court held that the circuit court did not err when it admitted the evidence. In addition, the appellate court held that the evidence was sufficient to prove the defendant guilty beyond a reasonable doubt, and that the defendant forfeited her prosecutorial misconduct argument by failing to object to the alleged errors at trial. Accordingly, the appellate court affirmed the circuit court's judgment.

¶ 2 The defendant, Ana E. Mateo, was convicted of aggravated criminal sexual abuse (720 ILCS 5/12–16(d) (West 2006)), and was sentenced to 24 months of probation. On appeal, the

defendant argues that: (1) the circuit court erred when it admitted Myspace messages into evidence; (2) the evidence was insufficient to prove her guilty beyond a reasonable doubt; and (3) the prosecutor made improper and prejudicial comments during closing arguments, which denied her a fair trial. We affirm.

¶ 3 FACTS

¶ 4 On October 16, 2008, the defendant was charged by indictment with aggravated criminal sexual abuse (720 ILCS 5/12–16(d) (West 2006)). The indictment alleged that she allowed a minor, A.M., to place his penis in her vagina, and that she was at least five years older than A.M.

¶ 5 A jury trial was held on September 22 and 23, 2009. In early 2008, the Joliet police department conducted an investigation into alleged sexual contact between the defendant and her paternal half-brother, A.M., over the Christmas 2007 holiday while at their father's house. On February 28, 2008, advocate Mary Jane Pluth interviewed A.M., and a recording of the interview was introduced into evidence. During the interview, 15-year-old A.M. stated that he had vaginal sex with the 27-year-old defendant around Christmas 2007. Initially, A.M. stated that they had sex two or three times, but later stated that it happened twice. In the days leading up to these two encounters, A.M. and the defendant exchanged amorous glances and had kissed at one point. A.M. provided details of both of the encounters, including that the first encounter happened after a night of drinking. After the encounter, A.M. stated that the defendant said she could not believe what they had done. The second encounter occurred after a night of drinking and smoking marijuana. They did not use protection and A.M. ejaculated inside the defendant during both of the encounters. Both encounters occurred on a mattress in the living room when the defendant's sister was sleeping on a sofa bed in the living room.

¶ 6 Also during the interview, A.M. stated that he and the defendant remained in frequent contact after the defendant returned to her home in Florida. The defendant again stated that she could not believe what they had done. They discussed their age differences, and the defendant mentioned potential legal consequences, including that she could be accused of raping A.M. despite the fact that the encounters were consensual. They also discussed the potential of getting a deoxyribonucleic acid test to determine paternity because the defendant suspected she was pregnant.

¶ 7 A.M.'s mother testified that after A.M. returned from the approximately two-week stay at his father's house, he was "being quiet and he was acting rebellious and like he was hiding something from me." A.M. began receiving phone calls late at night and was attempting to keep her from hearing his phone conversations and from seeing what he was doing on his computer. A.M.'s mother confronted him about his behavior. A.M. became angry with her, broke his phone in half, and threw it at her.

¶ 8 A.M.'s mother testified that she made him log in to his Myspace account. A.M. complied, and she saw several messages between A.M. and the defendant, whom she recognized because the messages were from "Ana" and because a picture of the defendant was next to the name. A.M.'s mother read some of the messages, one of which indicated that the defendant was pregnant. A.M. told his mother that he had sex with the defendant and that he was the father.

¶ 9 A.M.'s mother confronted the defendant about the situation by phone. The defendant began crying and apologized. A.M.'s mother asked the defendant why they did this and whether A.M. was in fact the father. The defendant said she suspected she was pregnant, but did not know if the father was A.M. or her boyfriend, and she was going to go to the doctor to find out.

¶ 10 A.M.'s mother also testified that the defendant tried sending a phone to A.M., but she sent it to A.M.'s friend. The package was intercepted by the mother of A.M.'s friend and given to A.M.'s mother. Further, A.M.'s mother testified that just after A.M. returned from his father's house, he asked for permission to go to Florida for the New Year holiday. One of the defendant's sisters called A.M.'s mother and offered to pay for the trip.

¶ 11 The State presented four exhibits containing alleged contact the defendant had with A.M. over Myspace. The messages allegedly from the defendant had the name "Ana" on them and had a photo of the defendant and A.M. next to the name. The messages allegedly from A.M. had A.M.'s first name on them. All of the messages were time and date stamped and were sent between January 9-15, 2008.

¶ 12 One exhibit included two instances of "A." referring to "Ana" as "sexii babi mama" and one instance of "Ana" referring to "A." as "baby Daddy." Both expressed that they missed each other, including "A." saying "I miss you like hell! I don't give a fuck what anyone says." Also, "Ana" stated, "i really don't think thats a good idea ,me being preg and staying at dads house.ya right people start asking ?.and all hell break loos."

¶ 13 Another exhibit included sexually explicit messages between "Ana" and "A." "Ana" stated, "hey papi!I love someone,yes i do!start smiling loser cuz its you!:)" The message also included sexually explicit language regarding foreplay and sexual intercourse, which later testimony revealed to be a paraphrasing of a magazine article. In the message, "Ana" substituted herself in place of the magazine's reference to a nonspecific woman by changing "her" and "she" to "my," "me," and "I." "A.'s" response to "Ana's" message included a statement that "i luv u wit all my heart," as well as references to having enjoyed licking her breasts and to looking forward

to having sex with her.

¶ 14 A third exhibit included another message from "A." referring to "Ana" as "my sexii babi mama." The exhibit also included a message from "A." to "Ana" regarding his desire to "play" with her vagina.

¶ 15 A fourth exhibit included a message from "A." to "Ana" that his mother had been asking him if he had sex with "Ana." "Ana" responded by saying "you need to trash all of are [*sic*] messages as soon as you read thm."

¶ 16 A.M.'s mother testified that these four exhibits were accurate printouts of the Myspace messages she saw on the computer. The circuit court admitted the exhibits over the defendant's objection.

¶ 17 A.M.'s father testified that at the time of the alleged incident, he was living with his girlfriend, her two sons, and her daughter. He invited the defendant, her sister, and A.M. to visit over the Christmas holiday in 2007. A.M. was supposed to sleep in a bedroom, while the defendant and her sister were supposed to sleep in the living room.

¶ 18 A.M.'s father learned of the alleged sexual relations between A.M. and the defendant from A.M.'s mother. A.M.'s father confronted the defendant about the alleged sexual relations over the phone after she returned to Florida. The defendant denied "having something with [A.M.]."

¶ 19 The prosecutor asked A.M.'s father numerous questions about an interview he gave to a Joliet detective. A.M.'s father said he recalled telling the detective that the defendant told him that drinking "lead on to this," that she did not look at A.M. as a brother, and that she understood A.M. was only 15 years old but "it happened." The defendant apologized to A.M.'s father after

he stated that A.M.'s mother told him that A.M. and the defendant had sex. A.M.'s father also testified that neither the defendant nor A.M. ever specifically told him that they had sex.

¶ 20 The girlfriend of A.M.'s father testified that A.M. slept on an air mattress in the living room with the defendant.

¶ 21 When he was called to testify at the trial, A.M. could not recall many of the statements he made to Pluth during the interview. He initially stated that he could not recall telling Pluth that he had sex with the defendant, but later stated he was "starting to remember" some of the statements, including that he and the defendant had vaginal sex. He also denied having any contact with the defendant over Myspace.

¶ 22 The defendant testified that she never had sex with A.M. She admitted that she communicated with him via phone and Myspace after she returned to Florida. She stated that she told A.M. about her possible pregnancy when she was in Illinois. She also stated that she never told A.M.'s mother that A.M. might be the father. She claimed that her apology to her father was for letting the kids drink alcohol and smoke marijuana when she was with them in Illinois.

¶ 23 The defendant also claimed that she made the "baby Daddy" comment in a Myspace message to A.M. only because she suspected she was pregnant and was not meant to insinuate that A.M. was the father. She also claimed that the Myspace message containing sexually explicit language was merely to inform A.M. of what she was reading at that particular time, but admitted that she personalized the magazine article's language.

¶ 24 During closing arguments, defense counsel did not object to any of the statements made by the prosecutor.

¶ 25 The jury found the defendant guilty. The circuit court sentenced the defendant to 24

months of probation. The defendant filed a motion for a new trial in which she argued, *inter alia*, that: (1) the court erred when it admitted the Myspace messages into evidence; (2) the evidence was insufficient to prove her guilty beyond a reasonable doubt; and (3) the prosecutor made improper and prejudicial comments in closing arguments, which denied her a fair trial. The court denied the motion, and the defendant appealed.

¶ 26 ANALYSIS

¶ 27 The defendant's first argument on appeal is that the circuit court erred when it admitted Myspace messages into evidence. Specifically, the defendant claims that the messages were not properly authenticated.

¶ 28 Documents can be authenticated by circumstantial as well as direct evidence. *People v. Chromik*, 408 Ill. App. 3d 1028, 1046 (2011). Circumstantial evidence of authenticity can include features that suggest a particular origin (see *People v. Faircloth*, 234 Ill. App. 3d 386, 392 (1992)); "factors such as appearance, contents, and substance" (*People v. Towns*, 157 Ill. 2d 90, 104 (1993)); and actions that are consistent with the substance of the document (see *1601 South Michigan Partners v. Measuron*, 271 Ill. App. 3d 415, 417 (1995)). Such evidence can also include "a showing that the writing contains knowledge of a matter sufficiently obscure so as to be known to only a small group of individuals." *Chromik*, 408 Ill. App. 3d at 1046. "A finding of authentication is merely a finding that there is sufficient evidence to justify presentation of the offered evidence to the trier of fact and does not preclude the opponent from contesting the genuineness of the writing after the basic authentication requirements are satisfied." *People v. Downin*, 357 Ill. App. 3d 193, 203 (2005). We review the circuit court's decision to admit a document for an abuse of discretion. *Downin*, 357 Ill. App. 3d at 202.

¶ 29 In *Downin*, this court held that the factors used by courts to authenticate writings also apply to email messages. *Downin*, 357 Ill. App. 3d at 203. In support of that holding, this court employed rationale that the standards applicable to writings were sufficient to cover issues presented by emails and their electronic mode of transmission. See *Downin*, 357 Ill. App. 3d at 203. We believe that rationale applies with equal force to the Myspace messages at issue in the instant case.

¶ 30 In this case, the messages contained in the State's exhibits were from "A." and "Ana." Next to the name "Ana" was a picture of A.M. and the defendant. The messages contained time and date stamps. The messages referenced the defendant's possible pregnancy and used language referring to their father and calling each other "baby Daddy" and "babii mama." One message from "Ana" told "A." "to trash all of are messages as soon as you read thm." One message from "A." to "Ana" stated that "A.'s" mother kept asking him if he had sex with "Ana." Some of the messages were sexually explicit, including "A.'s" reference to having enjoyed licking "Ana's" breasts. A.M.'s mother testified that she made A.M. log in to his Myspace account and she read several messages sent between A.M. and the defendant. She testified that the State's exhibits were accurate printouts of the messages she read on A.M.'s computer. Under these circumstances, we hold that the State's exhibits were properly authenticated and the circuit court did not abuse its discretion in admitting the Myspace messages into evidence.

¶ 31 The defendant's second argument on appeal is that the evidence was insufficient to prove her guilty beyond a reasonable doubt.

¶ 32 When faced with a challenge to the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have

found the elements of the crime proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 33 An individual "commits aggravated criminal sexual abuse if he or she commits an act of sexual penetration or sexual conduct with a victim who was at least 13 years of age but under 17 years of age and the accused was at least 5 years older than the victim." 720 ILCS 5/12–16(d) (West 2006). The only element challenged by the defendant is whether an act of sexual penetration occurred. In essence, the defendant is asking this court to reweigh the evidence. We are not permitted to do so. See *People v. Givens*, 237 Ill. 2d 311, 334 (2010); *Chromik*, 408 Ill. App. 3d at 1038.

¶ 34 In this case, A.M. gave an interview in February 2008 in which he stated that he and the defendant had sex twice during the Christmas holiday. A.M. provided details of these encounters, including a statement that when they finished having sex, the defendant said she could not believe what they just did. A.M.'s mother stated that A.M. admitted having sex with the defendant and claimed that he was responsible for the defendant's pregnancy. A.M.'s mother viewed Myspace messages between A.M. and the defendant, which were introduced into evidence and which contained sexually explicit language, including statements regarding foreplay and sexual intercourse, as well as a statement from A.M. about having enjoyed licking her breasts.

¶ 35 In addition, A.M.'s mother testified that she became suspicious of A.M. due to uncharacteristic behavior that began after he returned from his father's house. A.M. told his mother that he had sex with the defendant and that he was the father. She made A.M. log in to his Myspace account and she viewed the aforementioned Myspace messages. She confronted the

defendant by phone, and the defendant apologized. The defendant also told A.M.'s mother that she was not sure whether A.M. was the father. While neither A.M. nor the defendant admitted having sex to their father, their father testified that he gave statements to the police that drinking "lead on to this," and that she did not look at A.M. as a brother. Further, the defendant admitted exchanging messages with A.M. over Myspace, including that she paraphrased the sexually explicit magazine article and personalized it. It is true that A.M.'s trial testimony was inconsistent and even contradictory at times. Nevertheless, when viewing the evidence in the light most favorable to the State, we hold that a rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt.

¶ 36 The defendant's third argument on appeal is that the prosecutor made improper and prejudicial comments during closing arguments, which denied her a fair trial.

¶ 37 To properly preserve an argument for appellate review, a defendant must object to the alleged error at trial and raise the issue in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). In this case, while the defendant did raise the issue in her posttrial motion, the defendant did not object to the prosecutor's allegedly improper and prejudicial comments at trial. Because the defendant has not properly preserved her argument for appellate review, and because she does not request this court to review the matter for plain error, the defendant's argument is forfeited. See *People v. Hillier*, 237 Ill. 2d 539, 545-46 (2010).

¶ 38 CONCLUSION

¶ 39 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 40 Affirmed.