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FIRST DIVISION
FILED: JANUARY 30, 2012

No. 1-10-1656

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 7783
)	
JAMES HAMPTON,)	Honorable
)	Thomas M. Davy,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Karnezis and Rochford concurred in the judgment.

ORDER

Held: Trial court judgment affirmed where the evidence was sufficient to prove the defendant guilty of child abduction, the child abduction statute is not vague as applied to the defendant, and the trial court did not fail to conduct an adequate inquiry in the defendant's pro se claims of ineffective assistance of counsel.

¶ 1 The defendant, James Hampton, appeals from his bench trial conviction and subsequent sentence for child abduction. On appeal, the defendant argues that the State failed to prove him guilty beyond a reasonable doubt, that the child abduction statute is unconstitutionally vague as applied to him, and that the trial court failed to conduct an adequate inquiry into his pro se posttrial allegations that his counsel was ineffective. For the reasons that follow, we affirm the trial court's judgment.

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¶ 2 At the defendant's trial, the State's first witness, L.B., testified that, on her 15th birthday, at approximately 4:18 p.m., she was walking home from high school when the defendant drove his car beside her and said "aye hey girl, you know me, my name is Sean, you know me from Best Buy." The defendant then asked her to "come on, get in the car, come on, get in the car." L.B. said that she kept walking and did not respond but that she heard the car turn around to approach her again. When the car reached her again, the defendant stepped out of the car and said "I don't like rejection." L.B. recalled that, as she kept walking away from the defendant, he asked her if she liked his car and she replied "it's okay." She testified that the defendant then told her to "come on with me, I could buy you anything you want." According to L.B., the defendant proceeded to follow within a few feet of her as she sped up to walk to her home, which was approximately one and one-half blocks away. L.B. said that, during the encounter, she told the defendant that she was a freshman, in hopes that he would leave her alone. As she walked, she also telephoned her mother, and, once she reached her home, her mother let her inside. After L.B. went inside her home, she heard her mother talking to the defendant and then saw her mother call the police. L.B. said that she then led her mother to the defendant's parked car, and, when they reached the defendant's car, they saw police surrounding the defendant and his car. On cross-examination, L.B. agreed that she told the defendant during the encounter only that she was a freshman, not that she was a freshman in high school. She also acknowledged that, immediately following the incident, she had told police detectives that the defendant had asked for her telephone number, and she said that she had no answer when defense counsel suggested that she never told police that the defendant asked her to get into his car.

¶ 3 Aminah Rahman, L.B.'s mother, testified that, after receiving L.B.'s telephone call on the day of the incident, she opened the door to let her daughter inside, then confronted the defendant, who was standing at the gate in front of her home. The defendant "said tell her to come here" when Rahman asked what he wanted. According to Rahman, she responded by saying, "that is my daughter, she is fifteen years old, what do you want," a question to which the defendant responded by saying nothing but "just *** smiling." At that point, Rahman recalled, she contacted the police,

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and the defendant began walking away. Shortly thereafter, Rahman and L.B. walked together to the defendant's car, where they saw police surrounding the defendant.

¶ 4 Officer Ray Wilke testified that, on the day of the defendant's arrest, he was on duty when he was flagged down by L.B. and Rahman and directed to the defendant. Wilke recalled that the defendant initially fled but that police caught him after a short pursuit. Wilke said that, once caught, the defendant gave police a false name and birthdate. Wilke then described several statements the defendant made regarding the encounter with L.B., but those statements were excluded from evidence because they were obtained in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶ 5 After the trial court denied the defendant's motion for a directed finding at the close of the State's case-in-chief, the defendant presented a stipulation that, if called to testify, a particular police detective who spoke to L.B. and Rahman would say that there is nothing in his police report stating that L.B. reported that the defendant asked her to get into his car. The stipulation further provided that the same police detective would testify that Rahman reported that she saw the defendant being driven in an unmarked police car shortly after she left her home to find the defendant.

¶ 6 After hearing argument from both sides, the trial court found as follows, in pertinent part:

"Even if all that was said was 'hey *** come to my car, at the point where the defendant got out of the car and followed her, and kept asking, do you like my car, come with me, I can buy you anything you want, and kept up that conversation as [L.B.] was walking to her home.

When he got to the home he told the mother to have [L.B.] come out.

In [*People v. Wenger*, 258 Ill. App. 3d 561, 631 N.E.2d 277 (1994)], *** they cited some cases where the evidence was sufficient for a child abduction. In [*People v. Marcotte*, 217 Ill. App. 3d 797, 577 N.E.2d 799 (1991)], the defendant told the minor child she was pretty, motioned her over to his car, and asked her if she wanted him to pick her up after school to get her hair done.

[*People v. Joyce*, 210 Ill. App. 3d 1059, 569 N.E.2d 1189 (1991)], the defendant

waved to the child, told her I won't bite, and I will give you a ride home.

* * *

In this particular case, taking the totality of the testimony, the conversation of the defendant both in and out of the car, and the continued reference to the car, the fact that the car was only a short distance away, even at the time the defendant was out of the car, coupled with what [L.B] did admit to the detective, [']hey, *** come to my car,['] and then the further conversation about I'll buy anything you want, I feel that the evidence is sufficient to sustain the charge of child abduction beyond a reasonable doubt."

¶7 At the sentencing hearing, the defendant made a lengthy statement for the record. During that statement, the following colloquy took place:

"I wished that I would have been an opportunity for you to hear more of the evidence of what really took place. I wish I could have gotten – unfortunately, I was advised not to get on the stand, for whatever reason, that's my Counsel. ***

THE COURT: And you went along with his advice.

THE DEFENDANT: Yeah, because *** he's lawyer."

¶8 Later in the same statement, the defendant claimed that a mechanic who was a neighbor of the victim and who may have been a witness to the case declined to testify because he was threatened by police and that two of Rahman's neighbors also could have testified on his behalf. These witnesses, the defendant offered, would have said that the victim engaged the defendant in conversation during the encounter. At the conclusion of the defendant's statement, the trial judge indicated that he was compelled to follow up on some of the defendant's statements, which may have constituted claims of ineffective assistance of counsel. The court had the following exchange with defense counsel:

"And I think I am required, at this point, *** did you attempt to locate this car mechanic[?]

[DEFENSE COUNSEL]: *** I spoke with his family about that, and *** we talked in general terms about that, but *** --

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THE COURT: Did [the defendant] give you as much details as he gave me today?

[DEFENSE COUNSEL]: Not quite as much detail, Judge, but there was some detail about the – no, your Honor. It wasn't quite as detailed, but *** I felt I made a strategic call *** not to pursue *** that line ***.

THE COURT: You felt, based on what [the defendant had told you], as opposed to what was said today, that the –

[DEFENSE COUNSEL]: Yes, your Honor.

THE COURT: – witness would not be in his best interest?

[DEFENSE COUNSEL]: That was my opinion, at the time, Judge. You know, hindsight is 20/20, but at the time I felt that was the –

THE COURT: Well, hindsight as far as a[n] *** attorney can only *** go into areas where a defendant leads him with the information."

At that point, the trial court returned to announcing the defendant's sentence. At the conclusion of a subsequent hearing in which the trial court denied the defendant's motion to reconsider his sentence, the defendant asked to address the court personally, and argued at length that his trial counsel had been ineffective. Among the points the defendant raised were his complaints that his attorney did not call the mechanic to testify and in fact did not interview the mechanic, had limited contact with him, and failed to present a theory that the defendant was attempting to sell the victim a car. At the conclusion of the defendant's statement, the trial court noted that the defendant had already had an opportunity to raise any ineffective assistance of counsel claims and thus that a new inquiry was unnecessary. The defendant now timely appeals.

¶9 The defendant's first argument on appeal is that the State failed to present sufficient evidence to support his conviction. The due process clause of the fourteenth amendment to the United States Constitution requires that a person may not be convicted in state court "except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged." *People v. Cunningham*, 212 Ill. 2d 274, 278, 818 N.E.2d 304 (2004) (citing *In re Winship*, 397 U.S. 358,

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364 (1970)). When a court reviews a conviction to determine whether this constitutional right was violated, it must ask whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt. *Cunningham*, 212 Ill. 2d at 278 (quoting *Jackson v. Virginia*, 443 U.S. 307, 318 (1979)). In other words, the question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Cunningham*, 212 Ill. 2d at 278 (quoting *Jackson*, 443 U.S. at 319). The defendant was convicted here of child abduction, an offense that required the State to prove that the defendant "intentionally lure[d] or attempt[ed] to lure a child under the age of 16 into a motor vehicle *** without the consent of the parent *** of the child for other than a lawful purpose." 720 ILCS 5/10-5(b)(10) (West 2008). On appeal, he challenges the State's proof on three of the elements of this crime.

¶ 10 The first element the defendant argues the State failed to prove is the element that he attempted to lure L.B. into his car. According to the defendant, L.B.'s testimony that he attempted to lure her into his car was impeached by evidence that she told police immediately after the incident that he asked her only to "come to" his car, not get into it. The defendant further notes the stipulation that a detective who worked on the case would have testified that L.B. made no mention of the defendant's telling her to get into his car. However, L.B. testified explicitly that the defendant implored her to get into his car. Her version of events finds indirect support in the remainder of her account, as well as the recollection of her mother, as both stories portrayed the defendant as taking a suspicious interest in L.B. It finds further indirect support in evidence that the defendant fled, and thus indicated consciousness of guilt, when initially confronted by police. Viewing this evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have concluded that the State established the defendant's attempt beyond a reasonable doubt.

¶ 11 The defendant next challenges the element that L.B. was a child under the age of 16. He does not contest that L.B.'s actual age was 15 at the time of the incident, but he instead points out the many reasons he might have been confused as to her real age. The State responds by asserting that

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no mental state is required with regard to the victim's age; that is, the State argues that the victim's age is essentially a strict liability element of the crime at issue. The State bases its strict liability argument on the language of the child abduction statute and on the discussion in *People v. Douglas*, 381 Ill. App. 3d 1067, 886 N.E.2d 1232 (2008). In *Douglas*, the Second District of this court analyzed the issue of whether the offense of predatory criminal sexual assault of a child required a mens rea for the element of the victim's age. In so doing, the court engaged in a lengthy analysis of several sex crimes in which the victim's age is an attendant circumstance, of several other crimes involving attendant circumstances, of the history and general principles underlying strict liability in criminal law, and even of authority from other jurisdictions, before concluding that no culpable mental state was required for the attendant circumstance of a victim's age in a predatory sexual assault case. See *Douglas*, 381 Ill. App. 3d at 1072-87. The State asks that we apply the same reasoning here.

¶ 12 The defendant devotes the greater part of his response on this issue to the repetition of facts that he argues would have made it difficult for him to determine L.B.'s age. This part of his response does nothing to address the State's strict liability argument. Aside from those arguments, the defendant offers only that *Douglas* is distinguishable because it involved a predatory criminal sexual assault, while, here, the defendant stands convicted of a nonviolent crime. The defendant may be correct that his crime is distinguishable from that of the defendant in *Douglas*, but that fact does not address the State's point that the language of the statute, and the reasoning in *Douglas*, compels the conclusion that no mens rea is required for the age element in this case.

¶ 13 Further, even if we were to ignore the State's strict liability argument and assume that the child abduction statute does somehow require that a defendant know that his victim is under the age of 16, we would agree with the State that there was sufficient evidence of knowledge in this case. The defendant points out that the victim was only one year short of her 16th birthday, that she may have been wearing clothing to make herself appear more adult, and that there was no evidence that she expressly told the defendant her age. There was also evidence, though, that she told him she was

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a freshman. The defendant discounts this evidence because, he says, the statement that she was a freshman did not necessarily indicate that she was a freshman in high school. However, the information that she was a freshman, combined with the evidence that the defendant tried to lure her by referencing his car and his ability to buy her things, as well as the evidence of his strange smiling reaction when confronted by L.B.'s mother, very strongly support the inference that the defendant understood L.B. to be underage. As a result, again viewing the evidence in the light most favorable to the prosecution, we believe a rational trier of fact could have found this element to have been proven beyond a reasonable doubt.

¶ 14 The final aspect of the State's proof that the defendant disputes in this case is that relating to the element that he lured L.B. "for other than a lawful purpose." According to the defendant, the State presented no evidence of any unlawful purpose that he might have held. We disagree. The totality of L.B.'s and her mother's accounts paints a picture of a man attempting to flirt with an underage girl with the hope that he could lure her into his car, by inviting her to the car, engaging her in conversation, following her, offering to buy her things, and even smiling when asked what his intentions were toward the minor. This picture compels the strong inference that the defendant intended to make illegal sexual advances towards the minor, and a rational trier of fact certainly could have credited that inference to find that the State carried its burden to prove the defendant guilty beyond a reasonable doubt of child abduction. For that reason, we reject the defendant's argument that the State failed to present sufficient evidence to sustain his conviction.

¶ 15 As an adjunct to his sufficiency-of-the-evidence argument, the defendant also contends that the trial court relied on overturned case law when it reached its findings. The defendant observes that the trial court cited Marcotte and Joyce, two child abduction cases in which the court applied a (now declared unconstitutional) statutory presumption that unlawful purpose could be proved by the attempted luring of a child without parental consent, and the defendant notes that that presumption did not apply in this case. However, although the defendant is correct that the trial court cited Marcotte and Joyce, there is no indication from its comments that it applied any improper

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presumptions to reach its guilty finding. In fact, in reaching its guilty finding, the trial court relied not on a presumption that the defendant had an unlawful purpose, but on "the totality of the testimony," including testimony that the defendant offered to buy the victim anything she wanted. Because the trial court based its guilty finding on its assessment of the evidence at hand rather than an outdated and improper presumption, we do not agree with the defendant that its citation of partially overturned case law undermines its findings.

¶ 16 The defendant's second argument on appeal is that the child abduction statute is unconstitutionally vague as applied to him in that it criminalizes luring a child into a car "for other than a lawful purpose," and, in this case, the defendant argues, "in the indictment, the State failed to define the precise way in which [he] acted with 'other than a lawful purpose.'" The defendant's argument is misplaced. To the extent the indictment against him was insufficiently specific to the point that it hindered his defense, his challenge is to that document, not to the statute under which he was convicted.

¶ 17 As for the child abduction statute itself, we have little difficulty dispelling the notion that the statute is unconstitutionally vague. "To comply with due process requirements, the proscription of a criminal statute must be clearly defined and provide a sufficiently definite warning of the prohibited conduct as measured by common understanding and practices." *People v. Woodrum*, 223 Ill. 2d 286, 303, 860 N.E.2d 259 (2006). "Criminal statutes must be definite so that a person of ordinary intelligence will have a reasonable opportunity to know what conduct is prohibited." *Woodrum*, 223 Ill. 2d at 303. The supreme court has held that the phrase "other than a lawful purpose" in the child abduction statute normally provides this necessary information. See *Woodrum*, 223 Ill. 2d at 303 (rejecting facial vagueness challenge to the statute). Because the statute sets forth this information, we see no reason why it should be considered unconstitutionally vague as applied to the defendant in this case. That is, we disagree that the statute did not provide the defendant a sufficiently definite warning of the conduct it prohibited: the statute clearly proscribes attempts to lure a minor into a car without parental consent and for illegal lascivious purposes. For that reason,

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we reject the defendant's argument that the child abduction statute is unconstitutionally vague.

¶ 18 The defendant's third argument on appeal is that the trial court erred when it declined to conduct a hearing to investigate the defendant's pro se complaints of ineffective assistance of counsel presented at the conclusion of a hearing on the defendant's motion to reconsider his sentence. The procedures for addressing pro se posttrial allegations of ineffective assistance of counsel are well-settled. As our supreme court explained in *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.W.2d 631 (2003),

"when a defendant presents a pro se posttrial claim of ineffective assistance of counsel, the trial court should first examine the factual basis of the defendant's claim. If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the pro se motion. However, if the allegations show possible neglect of the case, new counsel should be appointed. [Citations.] The new counsel would then represent the defendant at the hearing on the defendant's pro se claim of ineffective assistance. [Citations.] The appointed counsel can independently evaluate the defendant's claim and would avoid the conflict of interest that trial counsel would experience if trial counsel had to justify his or her actions contrary to defendant's position. [Citations.]

The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into the defendant's pro se allegations of ineffective assistance of counsel. [Citation.] During this evaluation, some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted on a defendant's claim. Trial counsel may simply answer questions and explain the facts and circumstances surrounding the defendant's allegations. [Citations.] A brief discussion between the trial court and the defendant may be sufficient. [Citations.] Also, the trial court can base its evaluation of the defendant's pro se allegations of ineffective assistance on its

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knowledge of defense counsel's performance at trial and the insufficiency of the defendant's allegations on their face. [Citations.]"

¶ 19 Here, the defendant raised complaints about his counsel's performance at his sentencing hearing, and, after considering the defendant's points and interviewing defense counsel, the trial court determined that the claims lacked merit and did not warrant the appointment of new counsel. As the defendant acknowledges in his briefs, a trial court's decision to decline to appoint new counsel for a defendant, based on a judgment that the ineffective assistance claim lacks merit, will not be overturned on appeal unless the decision is manifestly erroneous. *People v. McCarter*, 385 Ill. App. 3d 919, 941, 897 N.E.2d 265 (2009).

¶ 20 The defendant raised three potential issues during his sentencing hearing. He argued that counsel had provided ineffective assistance by keeping him from testifying, by failing to call a car mechanic as a witness, and by failing to call two neighbors as witnesses. On the first issue, the defendant himself told the trial judge that counsel only advised him not to testify, and the defendant therefore admitted that he made the ultimate decision. Thus, there can be no argument that the trial court erred in declining to explore that issue further. On the latter points, the trial judge questioned the defendant's attorney, and counsel informed the court that he had declined to pursue "that line," a reference that can mean only that counsel determined as a matter of strategy that the defendant's assertion that he and the victim had a cordial interaction would not have helped the defendant's case. Accordingly, the defendant's latter two points pertained to matters of trial strategy, and, again, the trial court was correct to decline to appoint new counsel to argue those points. See *Moore*, 207 Ill. 2d at 78 ("If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the pro se motion").

¶ 21 Beyond his challenge to the merits of the trial court's decision not to investigate his pro se claims further, the defendant also argues that the trial judge's initial inquiry was improper, because the judge biased the inquiry against the defendant. In the defendant's view, the trial judge abdicated his duty to remain neutral when, during the inquiry into the defendant's claims, he asked leading

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questions of defense counsel and "improperly assisted defense counsel throughout the questioning."

We reject this characterization summarily. Our review of the trial court's questioning of defense counsel reveals no bias or improper conduct.

¶ 22 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 23 Affirmed.