NOTICE
Decision filed 06/01/12. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2012 IL App (5th) 100608-U

NO. 5-10-0608

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 09-CF-93
	)	
TODD DITTENBER,	)	Honorable
	)	Milton S. Wharton,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE SPOMER delivered the judgment of the court.
Justices Stewart and Wexstten concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant was proven guilty beyond a reasonable doubt, and defendant is not entitled to have his DNA analysis fee offset by the credit for time served in pretrial custody.

¶ 2 The defendant, Todd Dittenber, appeals his conviction for the offense of child abduction. For the following reasons, we affirm.

¶ 3 FACTS

¶ 4 The facts necessary to our disposition of this appeal are summarized from the testimony adduced from several witnesses at the defendant's jury trial and are as follows. On Sunday, January 25, 2009, the defendant was driving around Brooklyn, home to a number of strip clubs and bars, in search of a prostitute. He observed the victim in this case, R.B., who was then 15 years of age, as R.B. walked to church. The area in which he observed R.B. was several blocks from the "adult entertainment" district of Brooklyn; however, the defendant was unfamiliar with Brooklyn and claimed not to have known he had strayed from

that district. The defendant stopped his van next to R.B. and asked if she wanted a ride, purportedly because it was a cold and blustery day. She politely declined the offer of a ride and continued walking to church. The defendant continued to follow R.B., asking again if she wanted a ride. She ignored him, eventually arriving at the home of her godsister, where she reported her contact with the defendant to Brooklyn authorities. R.B. testified that the defendant never left his van, did not threaten her in any way, and was "somewhat" polite during their encounter. She also testified that on the day in question, she was wearing "fitted" blue jeans and a "puffy" black winter coat that came down to her waist, with the hood partially covering the sides of her face. R.B. was described by a police detective who investigated the incident as being about "five six, five seven." The detective agreed that R.B. was "well-proportioned." The detective testified that there is open street prostitution in Brooklyn on a daily basis, and he also admitted at trial that he had suggested to the defendant, during a postarrest interview, that perhaps the defendant was reasonably mistaken about how old R.B. was, because she was so bundled up against the elements. During that interview, which was recorded on DVD and admitted into evidence at the trial, the detective suggested R.B. looked "perhaps 30" due to her shape. Following the close of evidence, the jury was instructed as to the applicable law, including as to mistake of fact as a defense to the charge against the defendant. While deliberating, the jury sent out two notes, the first of which indicated that it was hopelessly deadlocked, and the second of which requested clarification of the mistake-of-fact defense as it related to the defendant's intent. Eventually, the jury found the defendant guilty of child abduction. The defendant was subsequently sentenced to two years' imprisonment, and this timely appeal followed. Additional facts will be provided as necessary throughout the remainder of this order.

¶ 5 ANALYSIS

¶ 6 On appeal, the defendant first contends he was not proven guilty beyond a reasonable

doubt. Specifically, he contends the evidence presented by the State failed to show that the defendant knew that R.B. was "a child under the age of 16," as required by statute to prove the offense of child abduction. See 720 ILCS 5/10-5(b)(10) (West 2008). He does not contend the evidence was insufficient to prove any of the other elements required for a conviction for child abduction. Accordingly, we shall confine our analysis to the question of whether it was proven that the defendant knew R.B. was not yet 16. We are mindful, as we do so, of the fact that when a defendant challenges the sufficiency of the evidence against him, the question we must answer is "whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt." *People v. Foltz*, 403 Ill. App. 3d 419, 423 (2010) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

¶ 7 In the case at bar, it is true, as the defendant contends, that R.B. was described as being approximately 5 feet 6 inches to 5 feet 7 inches tall and as being "well-proportioned." It is also true that because of these proportions, the investigating detective suggested to the defendant that R.B. looked "perhaps 30" years of age. Finally, it is uncontested that the date in question was an extremely cold and blustery one, and that R.B. was wearing a puffy black winter coat with a hood that partially obstructed the sides of her face. However, as the State points out, the jury heard and weighed all this evidence, saw a photograph of R.B. as she looked at approximately the time of the crime, and saw her testify in person at the defendant's trial a little more than 18 months later, when R.B. had attained the age of 16. Moreover, the jury was specifically instructed as to mistake of fact as a defense to the charge against the defendant, and it is clear from the notes sent out by the jury that it struggled with this issue. Against this backdrop, we cannot conclude that no rational trier of fact could have found the defendant guilty as charged. Accordingly, we will not disturb his conviction.

¶ 8 The defendant also contends he is entitled to have his DNA analysis fee of $200 offset

by credit for time served in pretrial custody. Specifically, he claims the "fee" was in fact a "fine" for which he was entitled to an offset. As the State points out, however, the Supreme Court of Illinois decided on December 1, 2011, that the DNA analysis fee is not a fine and therefore is not subject to an offset by credit for time served in pretrial custody. *People v. Johnson*, 2011 IL 111817, ¶ 28. Accordingly, the defendant is not entitled to the relief he requests.

¶ 9 CONCLUSION

¶ 10 For the foregoing reasons, we affirm the defendant's conviction and sentence.

¶ 11 Affirmed.