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2013 IL App (3d) 120593-U

Order filed July 18, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Plaintiff-Appellee,	)	Rock Island County, Illinois,
	)	
v.	)	Appeal No. 3-12-0593
	)	Circuit No. 11-CF-645
	)	
GREGORIO SOLIS,	)	Honorable
	)	F. Michael Meersman,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE SCHMIDT delivered the judgment of the court.  
Justices Carter and Holdridge concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* (1) Defendant was properly found to be a family member of the victim. (2) The State offered competent and admissible evidence to prove defendant's familial relationship to the victim. (3) The evidence at trial was sufficient to convict defendant of aggravated criminal sexual abuse and criminal sexual assault.
- ¶ 2 Following a bench trial, defendant, Gregorio Solis, was convicted of aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2010)) and two counts of criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 2010)), and was sentenced to consecutive terms of imprisonment

totaling 11 years. Defendant appeals, arguing that: (1) defendant was not a family member of the victim due to her mother's adoption; (2) the State failed to offer competent and admissible evidence to prove defendant was a family member; and (3) he was not proven guilty beyond a reasonable doubt because the State failed to prove his familial relationship to the victim. We affirm.

¶ 3

### FACTS

¶ 4 Defendant was charged by information with one count of aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2010)) and two counts of criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 2010)). The information alleged that on June 29, 2011, defendant, who was C.N.'s great-uncle, committed sexual acts with C.N. when she was under 18 years old.

¶ 5 At trial, J.K. testified on direct examination that she was C.N.'s biological mother. In 2011, C.N. lived with her father, but was visiting J.K. for the summer. In June 2011, C.N. met defendant for the first time at a graduation party. Over defense counsel's foundation objection, J.K. testified that defendant was her uncle, because he was her biological father's brother. J.K. explained that she mostly saw defendant at family gatherings.

¶ 6 On cross-examination by defense counsel, J.K. testified that she was adopted in 1976 by J.N. and L.N., who were unrelated to defendant. J.K. stated that she called defendant "uncle" because he was her biological father's brother. J.K. explained that when she was born, her biological mother, V.F., was not married. J.K. stated that paternity was established when V.F. took J.K.'s biological father to court to do a paternity test. When defense counsel asked if she had any firsthand knowledge, J.K. stated that V.F. told her. When asked if she knew that for certain, J.K. stated her biological father also said that he went to court. Defense counsel objected

on hearsay grounds, but the trial court overruled the objection, stating that the answer was responsive to defense counsel's question. J.K. testified that she did not have a court order establishing paternity, but that her adoption papers identified her biological father.

¶ 7 C.N. testified that defendant was her great-uncle, and that she called him Uncle Goyo. C.N. met defendant for the first time at her cousin's graduation party on June 10, 2011. On cross-examination, C.N. testified that she called defendant "uncle," because that was what J.K. called him.

¶ 8 Kevin Cox, an investigator with the police department, testified that he investigated the charges against defendant. Through his investigation, Cox learned that defendant was C.N.'s great-uncle, because C.N. told him that defendant was her great-uncle and J.K. told him that defendant was her uncle. Cox testified that he and Officer Andrew Raya interviewed defendant during the course of this investigation. A videotaped recording of the interview was played in open court. During the interview, defendant admitted committing sexual acts with C.N. Defendant denied any sexual conduct with his daughter, stating that his daughter was a blood relation and C.N. was adopted. Defendant also referred to and considered C.N. his great-niece.

¶ 9 The trial court found defendant guilty on all three counts, but reserved its ruling as to whether defendant was the great-uncle of C.N. On May 4, 2012, defendant filed a posttrial motion, alleging the State failed to prove that defendant was the great-uncle of C.N. because J.K. was adopted by a family that was not related to defendant.

¶ 10 At a hearing on May 10, 2012, the trial court found that the State proved that defendant was C.N.'s great-uncle beyond a reasonable doubt and denied defendant's motion. In making this finding, the court relied on J.K.'s testimony regarding her adoption papers listing her biological

father, combined with J.K.'s testimony that she was C.N.'s mother and her biological father was defendant's brother. The court also relied on defendant's acknowledgment in his interview that C.N. was his great-niece.

¶ 11 On May 22, 2012, defendant filed an amended posttrial motion, alleging that the State failed to produce any competent evidence, other than hearsay, to establish that Raul Solis, defendant's brother, was J.K.'s biological father. On June 18, 2012, the trial court denied defendant's motion and sentenced him to consecutive terms of imprisonment totaling 11 years. Defendant appeals.

¶ 12

## ANALYSIS

¶ 13

### I. Definition of Family Member

¶ 14 First, defendant argues the trial court erred when it found that he was a family member, namely the great-uncle, of the victim pursuant to section 11-0.1 of the Criminal Code of 1961 (the Code). Specifically, defendant claims that the adoption of the victim's mother in 1976, by a couple unrelated to defendant, severed any familial relationship he had to the victim.

¶ 15 This issue requires us to interpret section 11-0.1 of the Code in order to determine if defendant was a family member. We review questions of statutory interpretation *de novo*. *People v. Marshall*, 242 Ill. 2d 285 (2011). The primary objective of statutory interpretation is to ascertain and give effect to the legislature's intent. *Id.* The most reliable indicator of such intent is the plain language of the statute. *Id.*

¶ 16 Section 11-0.1 of the Code defines a family member as "a parent, grandparent, child, aunt, uncle, great-aunt, or great-uncle, whether by whole blood, half-blood, or adoption, and includes a step-grandparent, step-parent, or step-child." 720 ILCS 5/11-0.1 (West 2010). In the

instant case, the evidence at trial indicated that defendant was the brother of the victim's biological grandfather, and therefore, the victim's great-uncle. According to the plain language of the statute, defendant, a great-uncle by blood, would qualify as a family member. See 720 ILCS 5/11-0.1 (West 2010); *Marshall*, 242 Ill. 2d 285.

¶ 17 Defendant argues, however, that he should not be considered a family member of the victim because the adoption of the victim's mother severed his familial relationship to the victim. Defendant relies on section 17 of the Adoption Act, which provides that a judgment of adoption shall relieve the natural parents of all parental responsibility and legal rights with respect to the child sought to be adopted. See 750 ILCS 50/17 (West 2010). We acknowledge that under this section, the legal relationship between J.K. and her biological father was terminated when she was adopted in 1976. Be that as it may, the adoption did not destroy the blood relationship. The plain language of section 11-0.1 of the Code does not carve out an exception for a blood relative not to be considered a family member when there has been an adoption in the family. See 720 ILCS 5/11-0.1 (West 2010). Thus, we believe it was the legislature's clear intent to include defendant as a family member for purposes of sexual abuse and sexual assault charges.

¶ 18 II. Evidence Regarding Familial Relationship

¶ 19 Next, defendant argues the State failed to present any competent or admissible evidence to establish the name and identity of J.K.'s biological father or that he was defendant's brother, claiming that all the evidence presented was hearsay.

¶ 20 Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted and is generally inadmissible due to its lack of reliability. *People v. Caffey*, 205 Ill. 2d 52 (2001). Evidentiary rulings regarding hearsay are reviewed under an abuse of discretion

standard. *Id.*

¶ 21 In the instant case, defendant argues that no admissible evidence was admitted to establish J.K.'s biological father. Defendant claims that all of J.K.'s testimony regarding her father was hearsay, due to her lack of personal knowledge. See *People v. Was*, 22 Ill. App. 3d 859 (1974) (finding hearsay where a witness has no personal knowledge of the facts, such that his knowledge is derived entirely from information given by another). J.K. did admit that she did not have proof of paternity, stating that her biological parents verbally told her that a paternity test was taken. This testimony leads to the reasonable inference that J.K. spoke with her biological father. J.K. also testified that her adoption papers identified her biological father. Surprisingly, the State did not ask J.K. to identify her father by name. However, defendant ignores Rule 803(19) of Illinois Rules of Evidence (eff. April 26, 2012), which clearly provides that testimony regarding relationships by blood is an exception to the hearsay rule.

¶ 22 Defendant further argues that there was not a shred of admissible, competent evidence to establish that defendant was the brother of J.K.'s biological father. Specifically, defendant takes issue with the fact that the name of J.K.'s biological father was not presented to the court at trial; therefore, defendant contends, there was no way to prove defendant was his brother. The State argues that the father's name is irrelevant. We disagree. Query: What if his name were Seamus Patrick O'Malley? Would not that make it less likely that he was defendant's brother? Although the name of J.K.'s biological father would have been relevant, it was not required to prove defendant was C.N.'s great-uncle. J.K. testified that defendant was her biological father's brother. J.K. did not testify that someone else told her defendant was her uncle. J.K. knew the familial relationship she had to defendant based on her personal experiences and interactions at family

gatherings. Defendant similarly acknowledged this familial relationship in his interview when he referred to C.N. as his great-niece. C.N. also testified, without objection, that defendant was her great-uncle. Even if C.N. learned that defendant was her great-uncle by J.K., J.K. was available for cross-examination by defendant to establish such familial relationship. See *People v. Davis*, 130 Ill. App. 3d 41 (1984) (allowing hearsay when the declarant is present at trial and available for cross-examination). See also Ill. R. Evid. 803 (eff. April 26, 2012)

¶ 23 Therefore, even if hearsay evidence was admitted and the name of J.K.'s biological father was not revealed at trial, the State did present competent evidence to prove that defendant was C.N.'s great-uncle.

¶ 24 III. Sufficiency of the Evidence

¶ 25 Lastly, defendant argues he was not proven guilty beyond a reasonable doubt of aggravated criminal sexual abuse or either count of criminal sexual assault.

¶ 26 When a defendant challenges 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 essential elements of the crime proven beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1 (2011); *People v. Collins*, 106 Ill. 2d 237 (1985). The reviewing court must construe all reasonable inferences in favor of the State. *People v. Bush*, 214 Ill. 2d 318 (2005). We will not set aside a defendant's conviction unless the evidence was so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *Beauchamp*, 241 Ill. 2d 1.

¶ 27 In the instant case, defendant was charged with aggravated criminal sexual abuse and criminal sexual assault of a family member, his great-niece. Defendant's only argument is that

the State failed to prove his familial relationship to the victim, which was an essential element of the offenses. See 720 ILCS 5/12-16(b), 13(a)(3) (West 2010). Based on our holding that a biological relative, notwithstanding an adoption, qualifies as a family member, and viewing the uncontroverted evidence in the light most favorable to the State, we hold that a rational trier of fact could have found that defendant was C.N.'s great-uncle beyond a reasonable doubt. See *Beauchamp*, 241 Ill. 2d 1.

¶ 28

#### CONCLUSION

¶ 29 For the foregoing reasons, the judgment of the circuit court of Rock Island County is affirmed.

¶ 30 Affirmed.