2017 IL App (4th) 150367-U

NO. 4-15-0367

FILED
October 4, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
ISAAC A. FREEMAN,	)	No. 14-CF-845
Defendant-Appellant.	)	
	)	Honorable
	)	Scott Drazewski,
	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court concluded that the flaws in the indictment were nonprejudicial and that the State proved defendant guilty beyond a reasonable doubt.

¶ 2 In July 2014, defendant, Isaac A. Freeman, arrived at the Red Roof Inn in Bloomington, Illinois, accompanied by two young women, M.S. and A.J. Defendant was arrested and charged with promoting juvenile prostitution and promoting prostitution. However, the indictments omitted the *mens rea* requirement of the offenses.

¶ 3 After a March 2015 bench trial, the trial court found defendant guilty of promoting juvenile prostitution and sentenced him to 12 years in the Illinois Department of Corrections. Defendant appeals, arguing that (1) flaws in his indictment prejudiced his defense and (2) the State failed to prove him guilty beyond a reasonable doubt. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Events Leading to the Charges

¶ 6 The following evidence was presented at defendant's bench trial. In July 2014, defendant lived with Kathy F. in Bloomington, Illinois. Kathy F.'s niece, M.S., was 17 years old at the time and lived with Kathy and defendant. A.J. was M.S.'s friend.

¶ 7 In July 2014, according to the statements A.J. and M.S. gave to the police, defendant posted an advertisement on Backpage.com (Backpage) for a massage with two girls. M.S. testified that this is a website where individuals can post advertisements for property, jobs, and services in Bloomington. Robert Reed sent text messages to the cell-phone number listed on the advertisement. After receiving Reed's texts, defendant, M.S., and A.J. went, by cab, to the Red Roof Inn. Defendant was first to get out of the cab. He walked up to the Red Roof Inn, and then he walked away. Minutes later, Reed arrived at the hotel in a pickup truck. The two girls then exited the cab, walked to the pickup truck, and began talking with Reed. Shortly thereafter, Reed, M.S., and A.J. went into the Red Roof Inn. However, they later exited the hotel because they were unable to rent a room.

¶ 8 Bloomington police detective Michael Johnson happened to be viewing these events from across the street while eating lunch at a restaurant, and he suspected prostitution was involved. Johnson requested police backup. Johnson described the physical appearance of defendant and asked other officers to stop defendant for questioning if they could find him. Based on Johnson's physical description of the defendant, Bloomington police officers arrested him a few blocks away from the hotel, and he had a cell phone in his possession.

¶ 9 When Johnson first spoke to M.S. and A.J. at the hotel, they told him that they arrived at the hotel to "hang out with" defendant's friend. However, M.S. and A.J. stated that they did not know the name of the person they were supposed to hang out with. After speaking with Reed, M.S., and A.J., Johnson placed them under arrest.

¶ 10 The police then interviewed the suspects at the police station. Reed explained that he sent text messages to the cell-phone number listed on the Backpage posting because he intended to have sex with the two women listed in the posting. The cell-phone number on the Backpage advertisement belonged to Kathy F. Defendant was in possession of Kathy's phone when he was arrested.

¶ 11 During her recorded interrogation, M.S. admitted that she and A.J. went to the hotel to have sex for money. M.S. said that defendant had arranged this deal and that he would receive a percentage of the money they earned. A.J., in her recorded interview, stated that defendant had posted the Backpage advertisement. A.J. also accused defendant of arranging the deal.

¶ 12 B. The Indictment

¶ 13 The grand jury indicted defendant on two counts. Count I charged defendant with promoting juvenile prostitution (720 ILCS 5/11-14.4 (a)(1) (West 2012)), alleging the following:

> "Isaac A. Freeman on or about the 22nd day of July, 2014 in the County of McLean, State of Illinois, committed the offense of promoting juvenile prostitution in that the defendant advanced prostitution in that defendant arranged a meeting of persons for the purpose of prostitution and M.S., one of the persons offered for prostitution, was under 18 years of age *** in violation of 720 ILCS 5/11-14/4 (a)(1)."

¶ 14 Count II charged defendant with promoting prostitution (720 ILCS 5/11-14.3 (a)(1) (West 2012)), alleging the following:

> "Isaac A. Freeman on or about the 22nd day of July, 2014 in the County of McLean, State of Illinois, committed the offense of promoting prostitution in that he

arranged a meeting of persons for the purpose of prostitution *** in violation of 720 ILCS 5/11-14.3 (a)(1)."

¶ 15 C. The Bench Trial

¶ 16 In December 2014, a bench trial was held on both counts. At trial, M.S. recanted her prior statements made during the police interrogation. She testified that she had posted the Backpage posting and that it was not for prostitution. M.S. further stated that defendant had nothing to do with the arrangement. In response, the State introduced her prior recorded statements to Johnson which incriminated defendant. The trial court admitted these statements as substantive evidence. See 725 ILCS 5/115-10.1 (c)(2)(C) (West 2012).

¶ 17 A.J. likewise testified that defendant was not involved in the Backpage posting and that she and M.S. did not go to the hotel for prostitution. The State introduced her prior recorded statements made to Johnson as substantive evidence, which incriminated defendant. See *id.*

¶ 18 Reed testified that he responded to the Backpage posting to have sex with the two girls listed in the posting. He stated that he went to the Red Roof Inn after sending text messages to the cell-phone number listed on the posting. Reed testified that he had a pending criminal case arising from this transaction and that he had not received a plea offer from the State.

¶ 19 Johnson testified that he observed defendant, M.S., and A.J. arrive at the Red Roof Inn in a cab. Johnson explained that he was suspicious because the cab parked far away from the hotel, the individuals arrived at the hotel with no luggage, and the hotel was in a high crime area known for prostitution. Johnson testified that defendant exited the cab, walked up to the hotel, and then walked away.

¶ 20 In closing argument, defendant argued that the State failed to prove him guilty

beyond a reasonable doubt of promoting juvenile prostitution because (1) the State failed to produce the actual Backpage posting or the text messages sent by Reed, (2) Reed was not credible because of his desire for a favorable plea offer, (3) the statements by M.S. and A.J. during their interrogations were false, and (4) the State failed to prove that defendant knew M.S. was a minor.

¶ 21 The trial court found defendant guilty of promoting juvenile prostitution (count I) and promoting prostitution (count II) and merged the convictions. The court found the in-court testimony of M.S. and A.J. to be "flat-out lies." Conversely, the court found that their incriminating statements made to the police during their recorded interrogations were truthful. Further, the court found that the testimony of Reed and Johnson was credible. The court also found that defendant's possession of the cell phone listed on the Backpage posting was circumstantial evidence of his guilt. Finally, the court found that defendant had knowledge of M.S.'s age because of his long-standing relationship with both M.S. and her aunt. The court later sentenced defendant to 12 years in the Illinois Department of Corrections.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 Defendant argues that (1) flaws in the indictment prejudiced his defense and (2) the State failed to prove him guilty beyond a reasonable doubt. We will address these arguments in turn.

¶ 25 A. Defective Indictment

¶ 26 Defendant argues that flaws in the indictment prejudiced his defense. Specifically, defendant argues that the indictment was flawed because (1) it omitted the *mens rea* requirement of the statute and (2) failed to allege more precisely the nature and elements of the

offense. We disagree.

¶ 27 When a defendant challenges the sufficiency of his indictment for the first time on appeal, the question is whether the alleged defect in the indictment prejudiced defendant in preparing his defense. *People v. Childs*, 407 Ill. App. 3d 1123, 1129, 948 N.E.2d 105, 111 (2011). An indictment is deemed nonprejudicial if the indictment (1) apprised the defendant of the precise offense charged with enough specificity to prepare his defense and (2) would allow pleading a resulting conviction or acquittal as a bar to a future prosecution arising out of the same conduct. *Id.* at 1129, 948 N.E.2d at 110. In making this determination, a reviewing court may refer to the record. *Id.* at 1129, 948 N.E.2d at 111. A defendant must state with specificity how the defect in the indictment prejudiced his defense. *Id.* at 1130, 948 N.E.2d at 111; *People v. Davis*, 217 Ill. 2d 472, 479, 841 N.E.2d 884, 888 (2005).

¶ 28 1. *Omission of the* Mens Rea

¶ 29 Here, the State committed a serious mistake in omitting the *mens rea* requirement from the indictment. To be found guilty of promoting juvenile prostitution, one must *knowingly* arrange a meeting of persons for the purpose of prostitution with *knowledge* that the prostitute is a minor. 720 ILCS 5/11-14.4(a)(1) (West 2012); 720 ILCS 5/11-0.1(1)(B) (West 2012). Despite this statutory requirement, count I of the indictment omitted the requirement for knowledge and merely asserted the following:

> "Isaac A. Freeman on or about the 22nd day of July, 2014 in the County of McLean, State of Illinois, committed the offense of promoting juvenile prostitution in that the defendant advanced prostitution in that defendant arranged a meeting of persons for the purpose of prostitution and M.S., one of the persons offered for prostitution, was under 18 years of age *** in violation of 720 ILCS 5/11-14/4 (a)(1)."

¶ 30 However, this flaw in the indictment was not prejudicial. Defendant was represented by counsel who was aware of the *mens rea* requirement of the statute. In his closing argument, defense counsel argued that defendant did not *knowingly* advance juvenile prostitution. Counsel argued the following:

> "Is there any proof that [defendant] knew the age [of M.S.]? There has been evidence of M.S.'s age, but was there proof that the defendant knew the age? I would ask the Court to consider that."

¶ 31 The trial court was also aware of the *mens rea* requirement. Before finding defendant guilty of promoting juvenile prostitution, the court read the applicable statute into the record, including the *mens rea* requirement. Further, when finding that the State had proved defendant guilty beyond a reasonable doubt, the court explicitly found that defendant had knowledge of M.S.'s age:

> "What evidence is there that the State proved that M.S. was under the age of 18? Well, there was her own testimony that she was 17 years of age on July 22nd of 2014. Knowledge is typically proven by circumstantial evidence as opposed to direct. And there was testimony from M.S. that defendant, at least at that time, in July of 2014, was the aunt's boyfriend; and that they had been dating for approximately one to two years preceding that.
>
> Circumstantial evidence of the defendant then having knowledge of the age of M.S. because of the long-standing knowledge of not only the witness, that being M.S., but her aunt, can and will be imputed to the defendant that he had knowledge of her age on July 22nd, 2014, that being under the age of 18."

¶ 32 Further, the indictment correctly listed the statute defendant was accused of

violating and a brief statement of how he allegedly violated it. Based on this record, we conclude that the indictment apprised defendant of the precise offense charged with enough specificity for him to prepare his defense and would allow pleading his resulting conviction or acquittal as a bar to a future prosecution arising out of the same conduct. See *Childs*, 407 Ill. App. 3d at 1129, 948 N.E.2d at 110. Omitting the *mens rea* requirement from the indictment was therefore nonprejudicial.

¶ 33 2. *Nature and Elements of the Offense*

¶ 34 Defendant further argues that the indictment was prejudicial because it failed to allege more specifically the nature and elements of the offense. For example, defendant argues that failing to define the term "advance prostitution" prejudiced his defense. Likewise, defendant argues that he was prejudiced because the indictment failed to give an exact location of where the offense occurred. We disagree.

¶ 35 The indictment did not need to define the term "advanced prostitution" because the Criminal Code of 2012 already defined that term (720 ILCS 5/11-0.1 (West 2012)).

¶ 36 Further, the indictment did not need to include a more precise location of where promoting prostitution occurred. The fact that the offense occurred at a specific location was not an element of the offense. Accordingly, the indictment provided sufficient information for defendant to prepare his defense.

¶ 37 B. Sufficiency of the Evidence

¶ 38 Finally, defendant argues that the State failed to prove him guilty beyond a reasonable doubt. We disagree.

¶ 39 When a conviction is challenged on the basis of insufficient evidence, the relevant question is whether, after reviewing the evidence in the light most favorable to the prosecution,

any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224, 920 N.E.2d 233, 240 (2009). In a bench trial, the trial court determines the credibility of witnesses and resolves any conflicts or inconsistencies in the evidence. *Id.* The reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *Id.* A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *Id*. at 225, 920 N.E.2d 240-41.

¶ 40 Here, defendant argues that the trial court should have believed the in-court testimony of M.S. and A.J., in which they denied defendant's involvement. Defendant argues that their prior inconsistent statements made to the police, which implicated him for promoting prostitution, should not have been believed. Defendant further argued that Reed's testimony was not credible because of his desire to receive leniency from the State. Defendant also argues that the text messages sent by Reed were never presented at trial and the original Backpage posting was never introduced into evidence at trial.

¶ 41 Nonetheless, the trial court found that the in-court testimony of M.S. and A.J. contained "flat-out lies" and that their statements made to the police during their interrogations were truthful. Further, testimony at trial established that Reed went to the Red Roof Inn to have sex with two prostitutes for $220 after responding to a Backpage posting. Reed testified that he had sent text messages to the number listed on the Backpage posting. Defendant was found in possession of the phone Reed had sent text messages to for the purposes of arranging prostitutes. The trial court was also aided by the testimony of Johnson, an experienced law enforcement officer, who had witnessed the events at the Red Roof Inn. Finally, based on defendant's close and long-standing relationship to M.S., the trial court found that defendant had knowledge of her

age.

¶ 42 After reviewing the record in the light most favorable to the prosecution, we conclude that a rational trier of fact could find defendant guilty beyond a reasonable doubt of promoting juvenile prostitution.

¶ 43 Last, we thank the trial court for its thoughtful analysis and for explicitly stating for the record its factual findings, which we found very helpful in resolving this case.

¶ 44 III. CONCLUSION

¶ 45 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as the cost of this appeal. 55 ILCS 5/4-2002 (West 2016).

¶ 46 Affirmed.