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2018 IL App (3d) 160101-U

Order filed May 8, 2018

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2018

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
	)	Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-16-0101
v.	)	Circuit No. 15-CF-339
	)	
MATTHEW J. PETRAKIS,	)	Honorable
	)	Kevin W. Lyons,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Justices Holdridge and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The State did not establish defendant's guilt beyond a reasonable doubt for the offense of aggravated criminal sexual abuse. Defendant's uncontested conviction and sentence for involuntary sexual servitude of a minor is upheld.

¶ 2 Defendant, Matthew J. Petrakis, appeals his conviction and sentence arguing the evidence is insufficient to prove his guilt beyond a reasonable doubt. We affirm in part and reverse in part.

¶ 3 FACTS

¶ 4 The State charged defendant by way of an eight-count indictment. Relevant to this appeal, are three charges. Counts I and II charged defendant with involuntary sexual servitude of a minor based on the allegation that defendant knowingly recruited, enticed, or harbored a minor knowing that she would engage in commercial sexual activity or the production of pornography (720 ILCS 5/10-9(c)(1), (c)(2) (West 2014)). The relevant difference between the two counts is that count I alleged the victim was under 18, while count II alleged the victim was under the age of 17.

¶ 5 Count III charged defendant with aggravated criminal sexual abuse (*id.* § 11-1.60(d)). This count alleged defendant knowingly committed an act of sexual conduct with a person who was at least 13 years old but under 17 years old, and the act was committed when defendant was at least 5 years older than the victim.

¶ 6 At the bench trial, it was undisputed that defendant had sexual intercourse with the victim, P.H., several times before P.H. was 17 years old. P.H. testified her birthday was April 23, 1998, and she was 17 years old at the time of the trial. Initially, P.H. testified she told defendant she was 17 years old when they first met. However, P.H. later testified she told defendant she was "16 going to be 17" or "16 about to be 17." P.H. clarified later in her testimony she did not tell defendant her age upon them first meeting, but told defendant her age later in the same day.

¶ 7 According to P.H., she had sexual interactions with other men for money at defendant's request on about eight different occasions. P.H. also posed for partially nude photographs taken on defendant's phone. The photographs were used on a website as an advertisement for massages. Individuals would respond to the advertisements and would come to defendant's apartment. P.H. always gave the money she earned to defendant.

¶ 8 P.H. testified she overheard defendant say she was "only 17" during an argument between defendant and his friend. P.H. clarified, "well, he didn't say, she's only 17. He was, like, 'She's only 16' "

¶ 9 Defendant testified during the defense's case-in-chief. Defendant only knew P.H. by her nickname, "Unique." P.H. told defendant she was 19 years old when they first met and P.H. maintained this throughout their relationship. Defendant also knew P.H.'s occupation to be a stripper and prostitute, but he never encouraged, approved, or profited from her acts.

¶ 10 Ultimately, the circuit court acquitted defendant of count I (involuntary sexual servitude of a minor, under the age of 17). The court noted the charge required proof defendant knew P.H. was under 17, and the court explained:

> "I find that the defendant probably knew that [P.H.] was 16 going on 17 and just turned 17. I don't find her testimony to be credible enough to rely only on it, however; but I do believe that he knew she was underage, but I don't know what he thought underage would be, but I believe he knew it to be 18 or thought it to be 18, and *** I cannot beyond a reasonable doubt say that it was under 17."

By contrast, the court went on to find defendant guilty of count III (aggravated criminal sexual abuse, victim's age between 13 and 17). The court explained:

> "I'm not convinced that he knew whether she was under 17 or 18, but *** I do believe that there is, although not a duty, if the person who is clearly more than five years of age more than this category of persons, they have a special alert, if nothing else, to—have a certainty, and I think public policy is that there should be a greater certainty that the defendant tread carefully, and I do believe that he is guilty of Count 3, aggravated criminal sexual abuse."

The court also found defendant guilty of count II (involuntary sexual servitude of a minor, age between 17 and 18).

¶ 11 Following the sentencing hearing, the court sentenced defendant to 15 years' imprisonment for aggravated criminal sexual abuse. The sentence was ordered to run concurrently with defendant's conviction for involuntary sexual servitude of a minor (age between 17 and 18).

¶ 12 ANALYSIS

¶ 13 At the outset, we note defendant does not challenge the sufficiency of the evidence for his conviction of involuntary sexual servitude of a minor (count II – age between 17 and 18). Instead, based on the trial court's findings, defendant challenges the sufficiency of the evidence to sustain his conviction of aggravated criminal sexual abuse (count III – age between 13 and 17).

¶ 14 When a challenge is made to the sufficiency of the evidence at trial, we review to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In performing our review, it is not our function to retry defendant or substitute our judgment for that of the trier of fact. *People v. Evans*, 209 Ill. 2d 194, 211 (2004).

¶ 15 "A person commits aggravated criminal sexual abuse if that person commits an act of sexual penetration or sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person is at least 5 years older than the victim." 720 ILCS 5/11-1.60(d) (West 2014). However, it is an affirmative defense to this crime if "the accused reasonably believed the person to be 17 years of age or over." *Id.* § 11-1.70(b). If either defendant or the State introduces evidence to support the existence of the defense, the State is required to prove

beyond a reasonable doubt defendant did not reasonably believe the victim to be 17 years of age or older. *People v. Jones*, 175 Ill. 2d 126, 131-34 (1997).

¶ 16 In the instant case, both defendant and the State presented evidence at trial to support the existence of the affirmative defense that defendant believed P.H. was 17 years of age or older when defendant and P.H. first met. During the State's case-in-chief, P.H. gave conflicting testimony. Initially, P.H. testified she first told defendant she was 17 years old. Later during her testimony, P.H. testified she told defendant she was just 16 years old. However, defendant testified in his own defense and stated P.H. told him she was 19 years old when they first met. In light of this testimony, the burden was on the State to prove beyond a reasonable doubt defendant did not reasonably believe P.H. to be 17 years of age or older. *Id.*

¶ 17 Here, the trial court found defendant guilty of aggravated criminal sexual abuse of a minor under the age of 17. Yet, when declaring defendant guilty of this charge, the court specifically stated, "I'm not convinced that [defendant] knew whether she was under 17 or 18." Here, the trier of fact's language directly impacts the outcome of this appeal. Given the court specifically found the State failed to disprove defendant's affirmative defense—that he believed P.H. was 17 years of age or older—his conviction for aggravated criminal sexual abuse of a minor under the age of 17 (count III) cannot stand.

¶ 18 The court's determination of guilt on the above charge is inconsistent with the trial court's decision to find defendant not guilty of involuntary sexual servitude of a minor under the age of 17 where defendant also raised the same affirmative defense that he did not know P.H. was 17 years of age. Regarding the offense of involuntary sexual servitude of a minor under the age of 17, the trial court explicitly found P.H.'s testimony was not credible about her representation to defendant about her age. Since P.H.'s testimony was not credible, the court

found the State had failed to meet its burden in disproving the affirmative defense. The court carefully explained the basis of the acquittal for the offense of involuntary sexual servitude of a minor under the age of 17 as follows: "I do believe that [defendant] knew she was underage, but I don't know what he thought underage would be, but I believe he knew it to be 18 or thought it to be 18 and *** I cannot beyond a reasonable doubt say that it was under 17." It is the function of the trier of fact to assess the credibility of the witnesses and resolve inconsistencies in the testimony (*Evans*, 209 Ill. 2d at 211-12), and we will not substitute our judgment for that of the trier of fact (*People v. Downin*, 357 Ill. App. 3d 193, 202 (2005)).

¶ 19 The State contends defendant is categorically barred from challenging his conviction based on the trial court's inconsistent finding of guilt on count III (aggravated criminal sexual abuse, victim's age between 13 and 17) and the court's decision to acquit defendant on count I (involuntary sexual servitude of a minor, under the age of 17) under the rationale of our supreme court's decision in *People v. McCoy*, 207 Ill. 2d 352 (2003). In *McCoy*, our supreme court held inconsistent verdicts entered in a bench trial may not provide the *sole* basis to challenge a defendant's convictions. *Id.* at 355. The court noted consistency in verdicts is not required as a matter of constitutional law and inconsistent verdicts can often be explained as a product of judicial lenity. *Id*. at 356 (citing *People v. Jones*, 207 Ill. 2d 122, 130 (2003). The court went on to hold:

> "Though we do not encourage trial judges to stray from their duty to follow the law, we do acknowledge, without condoning, the clear reality that trial judges may exercise lenity in what they perceive as the interests of justice." *Id.* at 358.

¶ 20 While we acknowledge the *McCoy* court held inconsistent verdicts cannot provide the *sole* basis for challenging a defendant's conviction. However, defendant argues the evidence is insufficient to prove him guilty of the offense based on the court's explicit factual findings regarding his knowledge of P.H.'s actual age. In other words, the court's finding of guilt on the charge of aggravated criminal sexual abuse is contradictory to its explicit factual findings.

¶ 21 In sum, we reverse defendant's conviction and sentence for aggravated criminal sexual abuse because the trial court found that the State failed to present sufficient evidence to prove defendant did not reasonably believe P.H. to be under the age of 17 years. We affirm defendant's unchallenged conviction and sentence for involuntary sexual servitude of a minor (age between 17 and 18).

¶ 22 CONCLUSION

¶ 23 The judgment of the circuit court of Peoria County is affirmed in part and reversed in part.

¶ 24 Affirmed in part and reversed in part.