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2014 IL App (3d) 130425-U

Order filed September 22, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2014

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Henry County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-13-0425
)	Circuit No. 12-CF-229
)	
KEVIN D. ALDRICH,)	Honorable
Defendant-Appellant.)	Richard A. Zimmer and Charles H. Stengel, Judges, Presiding.

JUSTICE CARTER delivered the judgment of the court.
Presiding Justice Lytton and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to prove defendant guilty beyond a reasonable doubt.

¶ 2 The State charged defendant, Kevin D. Aldrich, with aggravated criminal sexual abuse (720 ILCS 5/11-1.60(d) (West 2012)); indecent solicitation of a child (720 ILCS 5/11-6(c)(3) (West 2012)); and solicitation to meet a child (720 ILCS 5/11-6.6(a) (West 2012)). After a bench trial, the court found defendant guilty of all three counts and sentenced him to two years' probation. Defendant appeals, challenging the sufficiency of the evidence. We affirm.

up in Kewanee and take her somewhere to get food.

¶ 8 Pence testified that he asked defendant whether he had romantic or sexual contact with A.M. Defendant denied that he had. Pence confronted defendant with text messages sent by defendant that Pence found on A.M.'s cellular telephone. The only omission from the texts as presented here is defendant's signature, "\$kevin\$," which appeared at the end of each of defendant's messages. One text message conversation read:

"[A.M.:] U shouyld come back up here

[Defendant:] Y ***

[A.M.:] I'm hungry

[Defendant:] What r u going to give me ***

[A.M.:] Idk¹

[Defendant:] If you dont know im not coming ***

[A.M.:] Lots of hugs

[Defendant:] Wont do ***

[A.M.:] A kiss on the cheek

[Defendant:] Wont do ***

[A.M.:] Sorry

[Defendant:] Y ***

[Defendant:] I would have brought extra money if u said more ****"

Pence told defendant that those text messages appeared to show defendant soliciting sex from A.M. Defendant initially denied that accusation but then said, "Maybe I was asking for it, but I

¹ Pence testified that "Idk" is an acronym for "I don't know."

didn't do anything."

¶ 9 Pence testified that he discovered approximately 30 text messages in which defendant told A.M. that he loved her. Another text conversation read:

"[Defendant:] I wish i would have come up tonite to spend time with you either in the van or in a room ***

[A.M.:] K

[Defendant:] The van would be cheaper ***

[Defendant:] If i wasnt tired i would come up cause i want to c u and i know u want to c me ***

[A.M.:] K

[Defendant:] Dont u ***

[A.M.:] Ya

[Defendant:] Good nite i love you ***

[A.M.:] Night love u

[Defendant:] Im going to the timber ill text u when i get back ***

[A.M.:] K"

¶ 10 Another text message conversation proceeded as follows, beginning at 10:23 p.m.:

"[Defendant:] I want to do something tonite ***

[A.M.:] Like what

[Defendant:] Idk ***

[Defendant:] Any ideas ***

[Defendant:] Any ideas ***

[Defendant:] I guess u dont have any ideas on what to do ***

[Defendant:] U quit texting me ***

[Defendant:] I want to do something tonite ***

[A.M.:] Like what

[Defendant:] I guess i wont get what i wished for for my birthday ***

[A.M.:] What

[Defendant:] i shouldnt have to tell ****"

¶ 11 Pence asked defendant whether he had taken A.M. to the Burger King in Kewanee and then parked in the Wal-Mart parking lot. Defendant admitted that sometimes he and A.M. would get food and park in the Wal-Mart parking lot while they ate. Pence asked whether defendant had tried to hug and kiss A.M. and grab her breasts and buttocks while in the Wal-Mart parking lot. Defendant initially denied that he had. Pence reminded defendant that Wal-Mart had cameras in the parking lot. Defendant then said that on one occasion in June 2012, while he and A.M. were parked in the Wal-Mart parking lot in Kewanee, he kissed her on the lips and touched her inner thigh. He also touched her breast over her clothes and accidentally touched her buttocks while trying to hug her. Defendant admitted that he knew A.M. was 16 years old at the time. At the end of the interview at defendant's home, defendant voluntarily gave his cellular telephone to Pence and Tone.

¶ 12 Tone testified that during the interview at defendant's home, defendant admitted he intentionally touched A.M.'s breasts and inner thigh and he may have accidentally touched her buttocks while he and A.M. sat in his vehicle in the Wal-Mart parking lot. Tone asked defendant about the text message conversation in which defendant said, "What r u going to give me." Defendant admitted that his intent during that conversation was to persuade A.M. to have sexual

intercourse with him.

¶ 13 A.M. testified that she initially knew defendant as a friend of her grandmother's. Eventually, defendant bought her a cellular telephone and would give her rides in his vehicle. A.M. testified that she and defendant would get food and park in the Wal-Mart parking lot to eat. On more than one occasion, defendant tried to kiss A.M. and put his hand on her leg. A.M. would yell at him when he touched her. On one occasion defendant put his arm around A.M. and touched her breast over her clothing. A.M. could not remember where they were parked when that touching occurred, but she thought it happened in Kewanee. After defendant touched her breast, A.M. yelled at him, and he took her home. A.M. thought of defendant as a father figure.

¶ 14 Defendant testified. In regard to the text message conversation in which he asked, "What r u going to give me," defendant testified that he was trying to get A.M. to pay him back money for things he had purchased for her. When he texted, "I guess i wont get what i wished for for my birthday," he was referring to money that A.M. owed him. He stated that on one occasion, he accidentally touched A.M.'s buttocks and breast while putting his arm around her. On other occasions he had tried to kiss A.M. on her neck and cheek. After defendant accidentally touched A.M.'s breast and buttocks, she told him to take her home, which he did. A.M. promised to pay him back for all the food he bought her, but she never did. Defendant considered himself a father figure to A.M., and he never intended to have sexual contact with her, nor was he sexually attracted to her.

¶ 15 On cross-examination, the State questioned defendant about a text message he sent to A.M. about buying her a new cellular telephone. Defendant texted her, "I need to talk to u b4 we get that with noone around." Defendant testified that he did not know why he needed to talk to

A.M. alone. On another occasion, defendant texted A.M. three times "U hungry" with no response from A.M. Defendant testified that he was carrying his cellular telephone on his belt loop and leaned up against something, accidentally causing the phone to send that message three times. Defendant testified that he had been getting food and was texting A.M. to see if she wanted to go along; he was not texting her for any unlawful purpose.

¶ 16 Additional text messages entered into the record included a conversation that read:

"[Defendant:] Would u text me back ***

[A.M.:] J was sleeping

[Defendant:] I came uP at about 100am to c u ***

[A.M.:] Oh

[Defendant:] I texted u I was coming up ***

[Defendant:] I texted u I was coming up ***

[A.M.:] My phone was off

[Defendant:] U just didnt want to c me ***

[A.M.:] My phone was fucking dead

[Defendant:] It was not dead at 300 am ***

[A.M.:] Ya

[A.M.:] I plugged it in

[Defendant:] I texted you at 1200 am and u texted me back ***

[A.M.:] Then it died kevin"

On another occasion defendant texted A.M., "Ive got the van again." Two days later defendant texted A.M. "I want to c u," three times without receiving a response from A.M.

¶ 17 The court found defendant guilty beyond a reasonable doubt of all three counts. As to aggravated criminal sexual abuse, the court found that: (1) defendant was at least five years older than the victim; (2) the victim was between 13 and 17 years old; and (3) defendant grabbed the breasts of the victim for the purpose of sexual arousal. As to indecent solicitation of a child, the court found that defendant "knowingly solicited A.M., a child who was under the age of 17, to perform an act of sexual conduct. He didn't actually use the words, but he certainly was implying to aid and abet A.M. to commit that act." As to the count of solicitation to meet a child, the court found that defendant used a cellular telephone to arrange a meeting with the victim to engage in sexual conduct.

¶ 18 Defendant filed a motion to reconsider, arguing that the trial court improperly weighed the evidence before it and improperly evaluated the credibility of witnesses. The court denied the motion. The court sentenced defendant to two years' probation. Defendant appeals.

¶ 19 ANALYSIS

¶ 20 On appeal, defendant argues that the evidence was insufficient to prove him guilty beyond a reasonable doubt of any of the three counts.

¶ 21 When a defendant challenges the sufficiency of the evidence, the question to be resolved is whether, after viewing the evidence in a light most favorable to the accused, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274 (2004). The trier of fact has the responsibility to determine the credibility of witnesses, to determine the weight to be given their testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *People v. Williams*, 193 Ill. 2d 306 (2000). A reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *People v. Givens*, 237 Ill. 2d 311 (2010).

¶ 22

I. Aggravated Criminal Sexual Abuse

¶ 23

Aggravated criminal sexual abuse as charged in this case requires proof beyond a reasonable doubt of the following elements: (1) defendant committed an act of sexual penetration or sexual conduct with the victim; (2) the victim was at least 13 years of age but less than 17 years of age; and (3) defendant was at least five years older than the victim. Sexual conduct includes a touching of the victim's breast through clothing, if the touching was done for the purpose of sexual arousal. 720 ILCS 5/11-0.1 (West 2012).

¶ 24

There is no question that the age requirements of the statute were met. The victim was 16 years old; defendant was 45 or 46 years old. In addition, there was sufficient evidence to prove beyond a reasonable doubt that defendant committed an act of sexual conduct with the victim.

¶ 25

Pence testified that defendant admitted to touching A.M.'s breast over her clothing. Tone testified that defendant admitted that the touching was intentional. A.M. testified that defendant touched her breast over her clothing. Defendant testified that he touched A.M.'s breast over her clothing, but that the touching was accidental. It was for the trial court to determine the credibility of the witnesses and to resolve conflicts in the evidence. Here, the trial court found credible Tone's testimony that defendant said the touching was intentional. The trial court drew a reasonable inference that the intentional touching was done for the purpose of sexual arousal. The evidence was sufficient to prove defendant guilty beyond a reasonable doubt.

¶ 26

II. Indecent Solicitation of a Child

¶ 27

Indecent solicitation of a child, as charged in the present case (720 ILCS 5/11-6(c)(3) (West 2012)), required proof beyond a reasonable doubt that defendant: (1) was at least 17 years of age; (2) knowingly solicited a person under 17 years of age to perform an act of sexual penetration or sexual conduct; and (3) solicited the person with the intent that an offense of

particular, the text messages in which defendant said he wanted "to do something tonite" and then stated "I guess i wont get what i wished for for my birthday," are evident of defendant enticing A.M. to meet him for the purpose of engaging in sexual penetration or conduct. In addition, defendant texted "I need to talk to u b4 we get that with noone around" and "Ive got the van again." A rational factfinder could have drawn the reasonable inference that those texts were sent to entice a meeting with A.M. for an unlawful purpose, without the knowledge of A.M.'s parent or guardian. The evidence was sufficient to prove defendant guilty beyond a reasonable doubt.

¶ 32

CONCLUSION

¶ 33

The judgment of the circuit court of Henry County is affirmed.

¶ 34

Affirmed.