2014 IL App (2d) 130523-U
No. 2-13-0523
Order filed June 16, 2014



---

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

---

| | | |
|---|---|---|
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of Du Page County. |
| Plaintiff-Appellee, | ) | |
| v. | ) | No. 11-CM-918 |
| JONATHAN KLIMEK, | ) | Honorable Jane Hird Mitton, |
| Defendant-Appellant. | ) | Judge, Presiding. |

---

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

**ORDER**

¶ 1 *Held*: Evidence was sufficient to allow trial court to find that defendant knew the victim's age such that conviction of criminal sexual abuse would stand.

¶ 2 Defendant, Jonathan Klimek, appeals his conviction of criminal sexual abuse (720 ILCS 5/12-15 (West 2010)). He contends that the State failed to negate the affirmative defense of mistake of age. For the reasons that follow, we affirm.

¶ 3 As charged in this case, the offense of criminal sexual abuse required that the State prove defendant committed "an act of sexual penetration" with the victim, that the victim was "at least 13 years of age but under 17 years of age," and that defendant "was less than 5 years older than

the victim." 720 ILCS 5/12-15(c) (West 2010). However, it is an affirmative defense that the accused "reasonably believed the [victim] to be 17 years of age or over." 720 ILCS 5/12-17(b) (West 2010). Where an affirmative defense is properly raised (other than insanity), the State bears the burden of proving beyond a reasonable doubt that the defense does not apply. 720 ILCS 5/3-2(b) (West 2010). Defendant argues that he successfully raised, and the State failed to rebut, the affirmative defense of mistake of age. See *People v. Lemons*, 229 Ill. App. 3d 645, 650-51 (1992). In this case, it is undisputed that defendant engaged in sexual conduct with the victim on September 27, 2010. The sole issue is whether defendant reasonably believed the victim to be 17 years' of age or over at this time. The parties are aware of the facts, and we will discuss only those necessary to address the issues we encounter below.

¶ 4 Defendant's challenge is one to the sufficiency of the evidence. *Id*. at 650. Therefore, the relevant question before this court "is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Williams*, 376 Ill. App. 3d 875, 883 (2007). In answering this question, we must construe the record in the light most favorable to the state. *Id*. All reasonable inferences must be drawn in the State's favor. *People v. Cunningham*, 212 Ill. App. 3d 274, 280 (2004). Moreover, it is primarily for the trier of fact—here, the trial court—to evaluate the credibility of witnesses and resolve conflicts in the evidence. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). This is because the trial court is in a superior position to make such decisions, as it viewed the testimony of the witnesses live, while this court is limited to reviewing a written transcript of the proceedings. See *People v. Cerda*, 2014 IL App (1st) 120484, ¶ 156. In other words, we owe great deference to the trial court's resolution of such issues. *Id*.

¶ 5 Having reviewed the record, we conclude that a rational trier of fact could have found that defendant knew the victim was 16 years old at the time he committed an act of sexual penetration upon her on September 27, 2010. At trial, the victim answered affirmatively when asked, "Prior to the point in time when you had sexual intercourse with the defendant, had you told him how old you were?" She also testified, "I told him my age when we first met." Defendant testified that he did not find out the victim was 16 until October 2010, when he attended a rugby game and met the victim's mother. Defendant also testified that when he first met the victim, she was wearing a low-cut shirt and short shorts. Her hair was done "up like fresh from a salon." She was wearing dark eyeliner and red lipstick. On one occasion, defendant and the victim spent time at one of defendant's friend's houses smoking marijuana. Further, defendant's father testified that the victim lied to him about her age when he asked if she was over 16 as curfew approached. Thus, the trial court was presented with conflicting evidence regarding whether defendant reasonably believed the victim was over the age of 16.

¶ 6 The trial court resolved this conflict by assessing the credibility of defendant and the victim. Specifically, the trial court found defendant's testimony incredible, basing this finding on the fact that defendant lied to the police when initially questioned about this incident. Conversely, the trial court found the victim's testimony "straightforward" and "very credible." The court found that the victim had told defendant how old she was. Given the deference we owe the trial court on matters of credibility (*Cerda*, 2014 IL App (1st) 120484, ¶ 156), we perceive no basis to disturb these findings.

¶ 7 Defendant asserts that the fact that the victim's mother told him the victim was only 16 at the rugby game in October 2010 establishes that he did not know the victim's age on September 27, 2010. He reasons, "Why would such a discussion need to take place if the Defendant already

knew her age?" At this point in the proceedings, all reasonable inferences are to be drawn in favor of the prosecution. *Cunningham*, 212 Ill. App. 3d at 280. One such inference is that the victim's mother did not know whether defendant knew her daughter's age at the time of the conversation the defendant testified to took place. In short, we find this argument unpersuasive.

¶ 8 Defendant claims the trial court never considered his affirmative defense. However, it expressly found "there was absolutely no reasonable belief that the defendant was at the – that [the victim] was over the age of 16." Thus, defendant's argument lacks a foundation in the record.

¶ 9 Defendant relies on *People v. Brown*, 171 Ill. App. 3d 391 (1988), and *People v. Jones*, 175 Ill. 2d 126 (1997); however, neither case is on point. In *Brown*, 171 Ill. App. 3d at 398-99, the issue was whether the defense of mistake of age could be raised through cross-examination. The issue in *Jones*, 175 Ill. 2d at 133-34, was whether the trial court erred in refusing to instruct the jury on the defense of mistake of age. As such, these cases do not provide significant guidance here.

¶ 10 Accordingly, defendant has not established that any error occurred in the proceedings below. We therefore affirm the judgment of the trial court.

¶ 11 Affirmed.