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2013 IL App (3d) 120230-U

Order filed October 21, 2013

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 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-12-0230
v.	)	Circuit No. 11-CF-67
	)	
CHRISTOPHER MACKLIN,	)	Honorable Stephen A. Kouri,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence, when examined in the light most favorable to the State, was sufficient to convict defendant of child pornography.

¶ 2 Following a jury trial, defendant, Christopher Macklin, was found guilty of criminal sexual assault (720 ILCS 5/12-13(a)(2) (West 2010)), criminal sexual abuse (720 ILCS 5/12-15(a)(2) (West 2010)), and child pornography (720 ILCS 5/11-20.1(a)(1)(vii) (West 2010)). Defendant was sentenced to consecutive terms of imprisonment of 22 years, 2 years, and 8 years,

respectively. Defendant filed a motion to reconsider sentence, which was denied. Defendant appeals, arguing that the State's evidence was insufficient to prove him guilty of child pornography. We affirm.

¶ 3 FACTS

¶ 4 At defendant's jury trial, the evidence indicated that on January 2, 2011, defendant's 19-year-old codefendants, Ricky Richardson and Michael Alexander, brought the 16-year-old victim to defendant's apartment. Defendant was 22 years old. Richardson had been friends with the victim since the previous summer, when the victim was between her sophomore and junior years of high school.

¶ 5 On January 2, 2011, Richardson invited the victim out. Richardson and Alexander picked up the victim from her home and drove to defendant's apartment. The victim testified that defendant knew how old she was because they had previously discussed her class at Richwoods High School and that he previously attended "Central." The victim also testified that her mother specifically told Richardson her age on one occasion. Although the victim conversed about her high school on the night of the incident, they did not discuss her age. She did not recall telling defendant that was she was 18 years old or that she was "old enough." The victim was sure that defendant knew her age on January 2, 2011.

¶ 6 On January 2, 2011, the victim, defendant, Richardson, and Alexander talked and listened to music. The victim was offered alcohol, but she declined. After the victim drank two or three cups of Kool-Aid, she became sleepy and asked to be taken home. She remembered throwing up in the bathroom, where she saw a phone and her empty wallet on the floor. She picked up the phone and her wallet. She next remembered waking up in a hospital bed.

¶ 7 The victim's mother testified that she became worried about the victim on the day of the incident and called police. When the victim arrived home she appeared intoxicated and was incoherent. The victim was taken to the hospital. A cellular telephone was found in the victim's possession, which contained video clips of defendant, Richardson, and Alexander engaged in various sexual acts with the victim while she was unclothed and unconscious or incoherent. The video was introduced into evidence and played for the jury.

¶ 8 Detective Ruth Sandoval of the Peoria police department testified that she was at the victim's home on January 2, 2011. Sandoval observed the victim exit from the vehicle of Alexander's girlfriend, Rachel Howell. The victim appeared to be intoxicated and could barely speak or keep her eyes open. She was transported to the hospital.

¶ 9 Howell testified that she volunteered to drive the victim home because defendant, Richardson, and Alexander had been drinking. She testified that the victim was drunk but not incoherent. The victim was coherent enough to give Howell directions to her home. The victim had also spoken with her boyfriend on the telephone. Howell asked the victim her age, and the victim indicated she was 18 years old.

¶ 10 Defendant testified that previously to the night of the incident, he had briefly conversed with the victim on two occasions. Defendant had met the victim in the summer of 2010 when she was with Richardson. From the time of his initial interaction with the victim until the date of the incident, he was never informed of the victim's age.

¶ 11 Defendant further testified that on the night of the incident the victim, Richardson, Alexander, and defendant were drinking liquor. Defendant asked the victim her age, and she indicated that she was "old enough." She clarified that she meant that she was 18 years old.

¶ 12 The jury found defendant guilty of criminal sexual assault, criminal sexual abuse, and child pornography (Class 1 felony), for which he was sentenced to 22 years, 2 years, and 8 years of imprisonment, respectively. Defendant filed a motion to reconsider the sentence, which was denied. Defendant appealed.

¶ 13 ANALYSIS

¶ 14 On appeal, defendant argues that the evidence was insufficient to prove him guilty of child pornography because he had no reason to believe the victim was underage and she had specifically indicated that she was 18 years old. When a defendant challenges the sufficiency of the evidence, a reviewing court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Collins*, 214 Ill. 2d 206 (2005); *People v. Collins*, 106 Ill. 2d 237 (1985). Under this standard, a reviewing court must allow all reasonable inferences from the record in favor of the prosecution. *People v. Bush*, 214 Ill. 2d 318 (2005).

¶ 15 We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt. *Collins*, 214 Ill. 2d 206; *Collins*, 106 Ill. 2d 237. In reviewing the evidence, it is not the function of the court to retry the defendant or substitute our judgment for that of the trier of fact. *Collins*, 214 Ill. 2d 206; *Collins*, 106 Ill. 2d 237.

¶ 16 To sustain a charge of child pornography, the State was required to prove that: (1) defendant filmed, videotaped, photographed, or otherwise depicted or portrayed by means of any similar visual medium or reproduction any child; (2) defendant knew or reasonably should have known that the child was under the age of 18 and at least 13 years of age; and (3) the child was

depicted or portrayed in a lewd exhibition of the unclothed or transparently clothed genitals, pubic area, buttocks, or, if the person is female, a fully or partially developed breast. 720 ILCS 5/11-20.1(a)(1)(vii) (West 2010). On appeal, defendant argues that the evidence was insufficient to prove that he knew or reasonably should have known that the victim was under the age of 18.

¶ 17 In this case, the victim testified that defendant knew her age of 16. She also indicated that defendant knew that she was attending high school. Defendant admitted to having multiple conversations with the victim, but denied knowing the victim's age. It was for the jury to determine the credibility and weight to be given to the witnesses' testimony. See *Collins*, 106 Ill. 2d 237 (decisions regarding the credibility of witnesses and the weight which should be given to the witnesses' testimony are exclusively within the province of the jury).

¶ 18 Additionally, the jurors had the opportunity to view the video of the victim as she appeared to defendant on the day of the incident. It would have been reasonable for the jury to infer from the video defendant should have known the victim was under 18 years old.

¶ 19 In considering all the evidence in the light most favorable to the prosecution, we find the evidence sufficient to sustain defendant's child pornography conviction. Therefore, we affirm.

¶ 20 CONCLUSION

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 22 Affirmed.