

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 100692-U

Filed 1/18/12

NO. 4-10-0692

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Livingston County
ARTHUR C. REED,)	No. 09CM460
Defendant-Appellant.)	
)	Honorable
)	Mark A. Fellheimer,
)	Judge Presiding.

JUSTICE COOK delivered the judgment of the court.
Justices McCullough and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The court affirmed the trial court's judgment finding (1) the State introduced sufficient evidence to prove defendant did not reasonably believe the victim was 17 years old beyond a reasonable doubt, and (2) the court did not apply an improper burden of proof to defendant's reasonable-belief defense.

¶ 2 In May 2010, after a bench trial, the trial court convicted defendant, Arthur C. Reed, of criminal sexual abuse (720 ILCS 5/12-15(c) (West 2008)). In August 2010, the court sentenced defendant to 30 days in the Livingston County jail, 24 months' probation, and ordered him to register under the Sex Offender Registration Act (Registration Act) (730 ILCS 150/1 through 12 (West 2010)). Defendant appeals, arguing (1) the State failed to introduce sufficient evidence to prove he did not reasonably believe the victim was 17 years old beyond a reasonable doubt, and (2) the court applied an improper burden of proof to his reasonable-belief defense.

We affirm.

¶ 3

I. BACKGROUND

¶ 4 In August 2009, the State charged defendant by complaint with one count of criminal sexual abuse (720 ILCS 5/12-15(c) (West 2008)), a Class A misdemeanor. The complaint alleged in January 2009, defendant committed an act of sexual penetration with V.L.W., who was at least 13 years of age but under 17 years of age at the time, and defendant was less than five years older than V.L.W. when the sexual contact occurred. Defendant waived his right to a jury trial and the matter proceeded to bench trial. The evidence introduced at trial showed the following, in pertinent part.

¶ 5 The parties entered into a stipulation prior to introducing testimony. In the stipulation, the parties agreed to the following: (1) an act of consensual sexual contact occurred between defendant and V.L.W. in January 2009, (2) V.L.W. was 15 when the sexual contact occurred, and (3) defendant was 18 when the sexual contact occurred. The only issue before the trial court was defendant's claim he reasonably believed V.L.W. was 17 years old when the sexual contact occurred.

¶ 6 V.L.W. testified she first met defendant in the summer of 2008, in between her freshman and sophomore years in high school. Defendant knew she was a sophomore in high school but they never discussed her age. V.L.W. claimed she had contact with defendant on a weekly basis between the summer of 2008 and January 2009. On one occasion, V.L.W. asked defendant for a ride and informed him she did not have a driver's license. V.L.W. began dating defendant in January 2009 after the sexual contact in question occurred.

¶ 7 At some point in January 2009, V.L.W. told defendant she could not come over to his apartment because her mother was worried about the age difference between them. It was

not clear whether this conversation took place before or after the sexual contact occurred. In June 2009, defendant told V.L.W. not to say anything about his knowledge of her age. The conversation occurred after police began investigating defendant on suspicion of criminal sexual abuse.

¶ 8 After V.L.W. testified, the State rested, and defense counsel recalled V.L.W. as a defense witness.

¶ 9 V.L.W. testified she was currently 16 years old. She stated she knew Darrell Griffith, Chris Petri, and Kyle Dunning as defendant's friends and had been around them on several occasions at defendant's apartment during and after January 2009.

¶ 10 Chris Petri testified he was friends with defendant and was around V.L.W. at defendant's apartment in January 2009. On one occasion a conversation occurred in defendant's kitchen about V.L.W.'s age, and Tiffany Arnold told Petri V.L.W. was 17 years old. Petri testified defendant was present during this conversation with Arnold and appeared to take in the information.

¶ 11 On cross-examination, Petri stated Arnold did not specifically say V.L.W. was 17 years old but told him "the girls she came with were 17," and V.L.W. was one of the girls Arnold came with.

¶ 12 Defendant testified he first met V.L.W. at a get-together at his apartment in late December 2008 or early January 2009. At the time, defendant did not know V.L.W.'s age, but he overheard Arnold tell Petri all the girls she came with were 17 years old. Defendant took this to mean V.L.W. was 17 years old. Defendant found out V.L.W. was 15 years old when police contacted him regarding his relationship with her, and defendant ended his romantic relationship

with V.L.W. Defendant is the father of V.L.W.'s child.

¶ 13 On cross-examination, defendant stated he never talked to V.L.W. prior to January 2009, though he had seen her around because she was the manager of the high school football team. Defendant went to the same high school as V.L.W., but they never had any classes together. In 2006, defendant went to an alternative high school and graduated in 2008. He returned to his previous high school for testing and sports events between 2006 and 2008.

¶ 14 Defendant stated he gave V.L.W. a ride one time and never saw her drive a car or met her out anywhere. Defendant had known Petri since 2004 and did not discuss Petri's testimony with him prior to trial.

¶ 15 On rebuttal, V.L.W. testified she saw defendant speaking to Petri in the hallway prior to trial.

¶ 16 Following closing arguments, the trial court found defendant guilty of criminal sexual abuse, stating:

"The question here is the affirmative defense of what we sometimes commonly refer to as the 'mistake of age defense' in legal terms as whether or not the defendant's belief that the victim in this case was at least 17 years of age was or was not reasonable under all these circumstances and evidence.

Credibility is at issue here, specifically the defendant's credibility. We are looking at it from his standpoint. And it is not what he necessarily thought, but whether or not his thoughts were reasonable to be determined under the reasonable person's

standard, meaning somebody in his shoes, did that person, assuming they were a reasonable person, whether that was a proper belief under all the circumstances and evidence that was known.

* * *

*** I look at the mistake of age or reasonableness of 17 or more as basically from a standpoint of either someone being duped into believing someone was a certain age, or that it was [a] chance encounter, meaning two people meet at some place and have no history of each other, all facts and circumstances lead that person to believe they are over the age of 17.

That is not what we have here. We have clear evidence of what was told to the defendant. *** There was [*sic*] multiple indicators here that I think a reasonable person would have picked up on to at least question the issue of age prior to going any further. *** [T]he credibility of the defendant is questionable when all these other indicators *** were right before his eyes that he chose to ignore.

* * *

I don't believe the defendant was duped in any fashion, and this was definitely not a chance encounter that the first time these people met was on the night in question.

So based upon the evidence here, I find that—I find the

defendant guilty beyond a reasonable doubt. The defendant has not sustained his burden as it relates to the affirmative defense of mistake of age."

The court then set the matter for sentencing.

¶ 17 Prior to the sentencing hearing, defendant filed a motion for a new trial, arguing (1) the State failed to introduce sufficient evidence to prove him guilty of criminal sexual abuse beyond a reasonable doubt, and (2) defendant proved his affirmative defense that he reasonably believed V.L.W. was 17 years old when the sexual contact occurred. In August 2010, the trial court denied defendant's motion for a new trial, sentenced defendant to 30 days in the Livingston County jail and 24 months' probation, and ordered him to register as a sex offender for a minimum of 10 years pursuant to section 3 of the Registration Act (730 ILCS 150/3 (West 2010)).

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, defendant argues (1) the State failed to introduce sufficient evidence to prove he did not reasonably believe the victim was 17 years old beyond a reasonable doubt, and (2) the court applied an improper burden of proof to his reasonable-belief defense.

¶ 21 A. Sufficiency of the Evidence

¶ 22 The offense of criminal sexual abuse, as charged by the State in the present case, is defined in section 12-15(c) of the Criminal Code of 1961 (Criminal Code) (720 ILCS 5/12-15(c) (West 2008)). Here, the parties stipulated to the fact that defendant's actions constituted criminal sexual abuse, and the only issue before the trial court was defendant's affirmative

defense. Section 12-17(b) of the Criminal Code (720 ILCS 5/12-17(b) (West 2008)) states:

"It shall be a defense under *** subsection (c) of section 12-15 *** of the [Criminal] Code that the accused reasonably believed the person to be 17 years of age or over."

¶ 23 This court in *People v. Lemons*, 229 Ill. App. 3d 645, 650-51, 593 N.E.2d 1040, 1044 (1992), stated:

"The defense of reasonable belief of age under section 12-17(b) operates in the same manner as does an affirmative defense, at least insofar as the requirement that unless the State's evidence raises the issue involving the alleged defense, the defendant, to raise the issue, must present some evidence thereon. [Citation]. If the issue is raised, the State has the burden of proving that the defendant did not reasonably believe the victim to be 17 or older, beyond a reasonable doubt, as well as the other elements of the offense." (Internal quotation marks omitted.)

Defendant argues he properly raised the issue of his reasonable belief V.L.W. was 17 years old, and the State failed to introduce sufficient evidence to show his belief was not reasonable beyond a reasonable doubt. We disagree.

¶ 24 When presented with a challenge to the sufficiency of the evidence, the question on review 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. Smith*, 185 Ill. 2d 532, 541, 708 N.E.2d 365, 369 (1999). The

reviewing court's role is not to retry the defendant. *Id.* Issues of witness credibility are to be resolved by the trier of fact and accorded great weight by the reviewing court. *Id.* at 542, 708 N.E.2d at 370.

¶ 25 At trial, V.L.W. and defendant introduced conflicting testimony regarding when they first met. V.L.W. claimed they had contact on a weekly basis from the summer of 2008 through January 2009, while defendant claimed they first met in January 2009. The trial court resolved this conflicting testimony in V.L.W.'s favor, specifically stating that it questioned defendant's credibility. Based on the fact defendant had weekly contact with V.L.W. for several months prior to having sexual contact with her, and testimony that defendant knew V.L.W. (1) was a sophomore in high school, (2) had no driver's license or car, and (3) was the manager of the high school football team, the court concluded a reasonable person would have inquired into V.L.W.'s age before pursuing a relationship any further. Viewing the evidence before the court in the light most favorable to the prosecution, we cannot conclude the court erred in finding defendant did not reasonably believe V.L.W. was 17 years old when he had sexual contact with her. See *Lemons*, 229 Ill. App. 3d at 652, 593 N.E.2d at 1045.

¶ 26 B. Burden of Proof Regarding Defendant's Reasonable-Belief Defense

¶ 27 Defendant admits he failed to preserve the issue of whether the trial court properly applied the burden of proof and raises the issue for the first time on appeal. Generally, both a trial objection and a written posttrial motion raising the issue are required to preserve it for appeal. *People v. Lewis*, 223 Ill. 2d 393, 400, 860 N.E.2d 299, 303 (2006). Defendant contends it should be reviewed for plain error under Illinois Supreme Court Rule 615(a) (eff. Jan. 1, 1967).

¶ 28 Plain-error review allows a court to rule on an issue not properly preserved, and otherwise forfeited, in either of two circumstances: (1) where it may have affected the outcome of a closely balanced case or (2) where the error was so serious it threatened the fairness of the outcome and the very integrity of the trial process. *People v. Thompson*, 238 Ill. 2d 598, 613, 939 N.E.2d 403, 413 (2010). Defendant argues the current issue falls under the second prong of plain-error review. Under the second prong of plain-error review, "the defendant must prove there was plain error and that the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Herron*, 215 Ill. 2d 167, 187, 830 N.E.2d 467, 479-80 (2005).

¶ 29 Defendant bases his argument that the trial court improperly shifted the burden of proof on the issue of reasonable belief on the court's statement that "defendant has not sustained his burden as it relates to the affirmative defense of mistake of age." The court's in-depth review and analysis of the facts on the record refute defendant's argument. See *People v. Howery*, 178 Ill. 2d 1, 33, 687 N.E.2d 836, 851 (1997) (where the trial court stated "there is no evidence of any kind to support a verdict of not guilty," it did not shift the burden to the defendant to prove his innocence but showed "that it considered and rejected the defendant's reasonable doubt defense."); see also *People v. Weston*, 271 Ill. App. 3d 604, 616, 648 N.E.2d 1068, 1076 (1995) ("The decision of the *** court will not be reversed based on an isolated statement." Further, "[t]he presumption that the *** court knows the law is not so easily rebutted *** by one isolated statement, especially where the court demonstrated excellent knowledge of law and facts throughout the trial.").

¶ 30 Here, the trial court discussed the evidence before it at great length. The court

went on to lay out the reasoning for its decision and addressed defendant's reasonable-belief defense properly. The court made a finding on the record that a reasonable person in defendant's position would not have believed V.L.W. was 17 years old. As in *Howery*, we conclude the court's statement that "defendant has not sustained his burden as it relates to the affirmative defense of mistake of age" merely demonstrated the court did not find defendant's reasonable-belief defense persuasive. The court's statements do not constitute plain error.

¶ 31

III. CONCLUSION

¶ 32 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 33 Affirmed.