

Circuit Court for Montgomery County
Criminal Case No. 132224

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 154

September Term, 2018

DANIEL MATTHEW DICKSON

v.

STATE OF MARYLAND

Berger,
Arthur,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 6, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a bench trial in the Circuit Court for Montgomery County, Daniel Dickson, appellant, was convicted of sexual solicitation of a minor. On appeal, Mr. Dickson challenges the sufficiency of the evidence. We shall affirm.

BACKGROUND

The evidence at trial demonstrated that on June 5, 2017, at approximately 7 p.m., 15-year-old J.H. and her 19-year-old sister, Y.H., were walking through the grounds of Loiederman Middle School in Silver Spring. J.H., the victim in this case, noticed that a van, driven by Mr. Dickson, made a U-turn and began to follow them by turning into the school driveway. Mr. Dickson asked for their names, but they ignored him. When he asked again, the girls gave fake names. Mr. Dickson told them they were “cute,” and continued to follow them in his van.

J.H. testified that Mr. Dickson then stepped out of his van and “asked if we would suck his cock,” while looking at her. Y.H. told Mr. Dickson that they were “underage,” at which point Mr. Dickson “asked the question again,” while looking at J.H. and Y.H., “staring at [them] up to down.”

The girls told Mr. Dickson that they were calling the police, at which point Mr. Dickson drove away. J.H. used her phone to make a video recording of Mr. Dickson’s van, capturing his license plate number, which was then provided to police. Mr. Dickson was arrested and a search of his van was conducted. Police found a mattress on the floor in the back of the van, and condoms and lubricant inside the glove box.

Mr. Dickson was charged with a violation of § 3-324 of the Criminal Law Article, which provides as follows:

(b) a person may not, with the intent to commit a violation of [various sex crimes statutes], knowingly solicit a minor, or a law enforcement officer posing as a minor, to engage in activities that would be unlawful for the person to engage in under [various sex crimes statutes].

The State’s theory of the case was that Mr. Dickson solicited J.H., a minor, to engage in fellatio, an activity that would constitute a third-degree sexual offense pursuant to Crim. Law § 3-307(a)(4), one of the sex crimes statutes specified in § 3-324.¹

In announcing its verdict of guilty, the court stated as follows:

So, when I consider the testimony and the 9-1-1 call and the body cam, I do come to the conclusion that the defendant knew that these girls, or at least that [J.H.], even though I’m going to say these girls because they very clearly tell him that they’re under age. It didn’t seem to deter him at all. He says, well, you’re cute, you’re really cute, and will you guys suck my cock, speaking to both of them.

* * *

The issue becomes . . . whether or not at the time [Mr. Dickson] was propositioning the girls, whether he knew that [J.H.] was, or that one of them was 14 or 15 years old. . . . The [c]ourt finds that [Mr. Dickson] knew that he was soliciting girls who he had been told were under age.

* * *

They looked young, they told him that they were under age, they were trying to quickly move away from him and move away from the situation and it wasn’t until he realized that the police were being called that he left the scene, and he did that because he knew that he was doing something that he shouldn’t have been doing, something that was illegal. So, for that reason, I am going to find him guilty of solicitation of a minor.

¹ Section § 3-307(a)(4) of the Criminal Law Article prohibits a person 21 or older from engaging in a “sexual act” with anyone who is 14 or 15 years old. Section 3-301(e)(1)(iii) includes fellatio in the definition of “sexual act.”

Mr. Dickson does not argue on appeal that the State failed to adequately prove J.H.’s age at the time of the incident.

DISCUSSION

On appellate review of the sufficiency of the evidence, we determine “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.” *Grimm v. State*, 447 Md. 482, 494-95 (2016) (quoting *Cox v. State*, 421 Md. 630, 656-57 (2011)). “When evaluating the sufficiency of the evidence in a non-jury trial, we will not set aside the judgment of the trial court on the evidence unless it is clearly erroneous, giving due regard to the trial judge’s opportunity to judge the credibility of the witnesses.” *Livingston v. State*, 192 Md. App. 553, 572 (2010). “If there is any competent evidence to support the factual findings of the trial court, those findings cannot be held to be clearly erroneous.” *Goff v. State*, 387 Md. 327, 338 (2005) (citations and internal quotation marks omitted).

Mr. Dickson asserts that based on J.H.’s testimony, a reasonable factfinder could not conclude that he knew J.H. was a minor when he propositioned her. He concedes that the evidence showed that his first request for fellatio was directed at J.H., based on J.H.’s testimony that he looked at her when he first asked the question. He asserts, however, that after Y.H. told him they were underage, he propositioned Y.H. only, and because Y.H. was not a minor, he did not violate § 3-324. We are not persuaded.

Not only does this argument ignore J.H.’s testimony that Mr. Dickson asked, both times, “if we would suck his cock,” thereby including J.H. in his proposition, it is a mischaracterization of the evidence. J.H. testified that after Y.H. told Mr. Dickson that

they were underage, he “asked the question again,” and that he looked at both of them when he repeated his request:

[J.H.]: He asked if we would suck his cock.

[PROSECUTOR]: Okay. And when he [] asked that question who did he look at:

[J.H.]: He mainly looked at me. And because of that my sister told him that we were underage.

[PROSECUTOR]: Okay then what happened after that?

[J.H.]: He asked the question again.

[PROSECUTOR]: Okay. And who was he looking at that time?

[J.H.]: He was looking at my sister.

[PROSECUTOR]: Okay. And did he also look at you that time?

[J.H.]: Yes.

[PROSECUTOR]: Okay. And what did he do with his eyes?

[J.H.]: He just stared at us. From like up to down.

Mr. Dickson also claims that the evidence was insufficient because there was some discrepancy in a portion of the testimony Y.H. gave at trial as to whether Mr. Dickson asked the girls to perform oral sex before or after she told him they were underage. He points to this exchange:

[PROSECUTOR]: Did he . . . ask you that question before or after you told him you were underage?

[Y.H.]: After.

[PROSECUTOR]: Okay. So you told the defendant that you were underage and then he asked you a question?

[Y.H.]: I don't know if it was after or before but he did say that.

[PROSECUTOR]: Okay.

[Y.H.]: I'm pretty sure it was after.

We agree with the State that any inconsistencies in the above excerpt of Y.H.'s testimony affects the weight of the evidence, not its sufficiency, and note that, as the State points out, Y.H. testified elsewhere in her direct examination, repeatedly and without reservation, that Mr. Dickson propositioned them after she told him they were underage. Moreover, the trial testimony of both J.H. and Y.H. that Mr. Dickson propositioned both of them after being told that they were underage was bolstered by police body camera footage, which was admitted into evidence, in which Y.H. and J.H. explained the chronology of events to one of the responding officers:

[OFFICER]: So, he said how old are you girls?

[Y.H.]: Yeah.

[OFFICER]: Okay.

[Y.H.]: And then I said we're underage.

[OFFICER]: Okay.

[Y.H.]: And then - - and then he was like were you guys - - what did he say[, J.H.]?

[J.H.]: He said you guys are really cute and he repeated the question again like mumbling. Asking if we wanted to suck his cock.

Finally, Mr. Dickson claims that the court's comments when announcing its verdict demonstrates that the court was unable to find that he solicited J.H. after he knew that she

was a minor. We need not address this contention. In evaluating the sufficiency of the evidence in a bench trial, “we are concerned with what the judge actually did[,]” and not “with the words [the judge] used to describe what he [or she] did.” *Travis v. State*, 218 Md. App. 410, 427 (2014). Viewing the evidence in the light most favorable to the State, as we are required to do, we conclude that the State presented sufficient evidence to support Mr. Dickson’s conviction.

**JUDGMENT OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**