

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0741-15T3

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

WILLIAM F. SAPONARO, JR.,

Defendant-Appellant.

Argued April 25, 2017 – Decided May 31, 2017

Before Judges Vernoia and Moynihan.

On appeal from the Superior Court of New
Jersey, Law Division, Cape May County
Indictment No. 13-04-0411.

Frank Pugliese, Assistant Deputy Public Defender,
argued the cause for appellant (Joseph E. Krakora,
Public Defender, attorney; Mr. Pugliese, of counsel
and on the brief).

Jane C. Schuster, Deputy Attorney General, argued
the cause for respondent (Christopher S. Porrino,
Attorney General, attorney; Sara M. Quigley,
Deputy Attorney General, of counsel and on the brief).

PER CURIAM

Defendant William F. Saponaro, Jr. appeals the trial court's denial of his motion in limine to present a mistake of fact defense. He argues that the application of N.J.S.A. 2C:14-5c violated his due process rights because it deprived him of a defense to the charges of sexual assault and endangering the welfare of a child. We disagree and affirm.

On or before June 21, 2012, B.W., a thirteen year old boy, accessed GrindrX on his personal cell phone. GrindrX is a paid, online dating application through which bisexual and homosexual persons meet. B.W. and co-defendant, Mark LeMunyon,¹ twenty-four years old, agreed to meet for a sexual encounter. LeMunyon subsequently invited the defendant, then forty-nine years old, to participate in the rendezvous; defendant agreed. B.W. went to defendant's home and engaged in a variety of sex acts with defendant and LeMunyon. On June 22, B.W. informed his mother of the assignation with defendant and LeMunyon. Authorities were notified after B.W.'s mother took him to the hospital for an examination. Defendant was arrested on June 28.

The victim's age was a statutory factor in two counts defendant faced. The State was required to prove, as an element of the sexual assault, that the victim was at least thirteen but

¹ LeMunyon pled guilty and did not join this appeal.

less than sixteen years old, N.J.S.A. 2C:14-2c(4). It was further required to prove that the victim was under the age of sixteen as an element of the endangering charge, N.J.S.A. 2C:24-4a(1).

Defendant moved in limine to present, at trial, that he was reasonably mistaken as to the age of the thirteen year old victim. The evidence proffered by defendant in support of the motion was: the victim told defendant he was eighteen years old, appeared to be eighteen, and used a website that required the victim to pay by credit card.

Judge Patricia M. Wild, in a discerning oral opinion, denied defendant's motion. Thereafter, defendant entered a plea of guilty to third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4a(1), and fourth-degree criminal coercion, N.J.S.A. 2C:13-5a(1)(amended from a third-degree conspiracy to commit sexual assault). The plea bargain called for the dismissal of second-degree sexual assault, N.J.S.A. 2C:14-2c(4).

Pursuant to Rule 3:9-3(f), defendant preserved his right to appeal the trial court's denial of his motion in limine, as memorialized in the record of the plea allocution. The court and

the assistant prosecutor acknowledged that the reservation by defendant was a term of the plea agreement.²

On appeal, defendant contends:

N.J.S.A. 2C:14-5(C) IS UNCONSTITUTIONAL AS APPLIED TO THE FACTS OF THIS CASE. THE TRIAL COURT'S ORDER DENYING DEFENDANT'S RIGHT TO PRESENT A MISTAKE OF FACT DEFENSE MUST BE VACATED AND THE MATTER REMANDED FOR FURTHER PROCEEDINGS. (U.S. CONST., AMENDS. VI; XIV; N.J. CONST., ART. I. PARS. 9, 10)³

N.J.S.A. 2C:14-5c provides, "It shall be no defense to a prosecution for a crime under this chapter that the actor believed the victim to be above the age stated for the offense, even if such a mistaken belief was reasonable." By enacting the strict liability provisions of N.J.S.A. 2C:14-5c, the Legislature affirmed the long-standing rejection of the mistake of age defense for sexual crimes against underage victims. See State v. Moore,

² The State relies on the majority holding in State v. Davila, 443 N.J. Super. 577 (2016), in arguing that we should decline to hear this appeal because it is moot. Defendant pleaded guilty to the endangering the welfare of a child count. That count was not dismissed. The appeal relating to that charge is cognizable. As to the sexual assault count, defendant complied with the requirements of Rule 3:9-3(f). He reserved his right to appeal; both the court and the State approved that reservation. The issue is not moot as to that charge for the reasons expressed by Judge Gilson in his concurring opinion in Davila, id. at 591-96, with which we agree.

³ Defendant confirmed during oral argument that he abandons the contention made at the trial level that the statute was also constitutionally infirm on its face.

105 N.J. Super. 567 (App. Div.), certif. denied, 54 N.J. 502 (1969).

The trial court perceptively recognized the pertinent holding in State v. Maldonado, 137 N.J. 536, 550-51, 554-56 (1994), where our Supreme Court ruled that the Legislature has the power to enact strict liability laws to curb serious threats to public safety. "[C]onstitutional-due-process limitations on strict liability criminal statutes apply [only] when the underlying conduct is so passive, so unworthy of blame, that the persons violating the proscription would have no notice that they were breaking the law." Id. at 555. It is enough that the Legislature reaches "a rational conclusion that the safety of the public requires" strict liability for serious offenses. Id. at 551.

We have long held that a mistaken belief as to the age of a victim in an age-based sexual crime is not a defense. In Moore, supra, 105 N.J. Super. at 571, we considered an argument similar to that advanced here. Defendant, Moore, challenged a statute that criminalized "carnal[] abuse of a woman-child of the age of 12 years or over, but under the age of 16, with or without her consent" by a person sixteen years of age or older. Ibid. Calling the statute "unconstitutionally arbitrary and irrational," Moore advanced, "in to-day's sexually oriented and educated society

. . . it is absurd to continue to apply the statutory rape standard as if you were dealing with a ten year old." Ibid.

We rejected Moore's attempt to interpose the defense that he reasonably believed the victim was above the minimum statutory age. Id. at 569. We reasoned, "The crime has been defined by the Legislature in terms which negate any element of criminal intent on the part of the actor. It is for that body, not the courts, to change the law, if it chooses to subscribe to a more liberal pattern of sex behavior." Id. at 571.

Our Legislature recognized that children should be protected—without regard to a perpetrator's knowledge of the minor's age— from sexual assaults. The sexual assault of a child is not passive conduct. It is not blameless. Sexual offenders cannot reasonably plead ignorance of a victim's age. The face-to-face violation provides ample notice to the perpetrator that the victim is a minor. See United States v. X-Citement Video, Inc., 513 U.S. 64, 72 n.2, 115 S. Ct. 464, 469 n.2, 130 L. Ed. 2d 372, 381 n.2 (1994). The statute imposing strict liability for sexual relations both protects the public, i.e., minor children, and acts as a strong deterrent to sexual attacks on those children. N.J.S.A. 2C:14-5c does not violate defendant's due process rights. It is a proper exercise of the Legislature.

Defendant's reliance on the dissent in Fleming v. State, 455 S.W.3d 577 (Tex. Crim. App. 2014), is rejected as inapposite to our settled law.⁴

Defendant also argues that N.J.S.A. 2C:14-5c does not apply to the crime of endangering, N.J.S.A. 2C:24-4a(1). He asserts that he should be allowed to present a defense that he did not know the victim was under the age of eighteen, or did not reasonably believe him to be at least eighteen.

First, we note that these crimes occurred on or about June 21, 2012. It was not until July 1, 2013 that the Legislature increased the age of children protected by Chapter 24 from sixteen to eighteen. L. 2013, c. 51 §13. The pertinent age here is sixteen, not eighteen.

Endangering the welfare of a child is not a strict liability crime. State v. Demarest, 252 N.J. Super. 323, 329 (App. Div. 1991). The Legislature, however, did not include a defendant's knowledge of the victim's age as an element of the crime of endangering when it enacted the statute to impair or debauch the child's morals."

⁴ The majority decision in Fleming is consonant with New Jersey jurisprudence.

In State v. Perez, 177 N.J. 540 (2003), our Supreme Court held that the Legislature intended the age standards of Chapter 14 apply to Chapter 24:

The child-endangerment statute is codified under chapter 24 of the Code, whereas other sexual offenses are found under chapter 14. Given the statute's text and the Code's overall structure, we conclude that the Legislature intended the chapter 14 standard in respect of a victim's age to apply here. The import of that conclusion is that the child-endangerment statute requires only objective proof that the alleged victim was a child under the age of sixteen, not that the accused knew or reasonably should have known that fact. See N.J.S.A. 2C:14-5c (providing that defendant cannot assert as defense mistaken belief that his or her victim was "above the age stated for the offense"). Under that standard, the State sufficiently proved the age of the victim, irrespective of defendant's statement that D.D.'s "looks [were] deceiving" and that he believed that she was "about 16."

[Id. at 555.]

In light of the consistent efforts of the Legislature to expand its protection of children by strengthening the provisions of Chapter 24, see generally State v. Bryant, 419 N.J. Super. 15, 25-27 (App. Div. 2011), it is not unexpected that the Perez Court grafted the age-related strict liability provisions of Chapter 14 to the endangering statute.

Just as the strict liability treatment of the sexual assault statute does not violate due process principles, for the same

reasons the absence of proof of mens rea with regard to the age of an endangered child does not violate the constitution.

Judge Wild properly rejected defendant's contentions. Inasmuch as the application of N.J.S.A. 2C:14-5c to defendant does not offend the constitution, the motion to permit the mistake of fact defense was properly denied.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.


CLERK OF THE APPELLATE DIVISION