16CA1627 Peo v Weatherspoon 12-20-2018

COLORADO COURT OF APPEALS

DATE FILED: December 20, 2018
CASE NUMBER: 2016CA1627

Court of Appeals No. 16CA1627
Arapahoe County District Court No. 15CR1355
Honorable Ben L. Leutwyler, Judge

The People of the State of Colorado,

Plaintiff-Appellee,

v.

Matthew Davonn Weatherspoon,

Defendant-Appellant.

JUDGMENT AFFIRMED

Division III
Opinion by JUDGE WELLING
Webb and Harris, JJ., concur

NOT PUBLISHED PURSUANT TO C.A.R. 35(e)
Announced December 20, 2018

Cynthia H. Coffman, Attorney General, Marixa Frias, Assistant Attorney General, Denver, Colorado, for Plaintiff-Appellee

The Joffe Law Firm, Danyel S. Joffe, Denver, Colorado, for Defendant-Appellant

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¶ 1 Defendant, Matthew Davonn Weatherspoon, appeals his convictions for trafficking for sexual servitude, patronizing a prostituted child, inducement of child prostitution, pimping of a child, pandering of a child, keeping a place of child prostitution, and contributing to the delinquency of a minor. We affirm.

I. Background

¶ 2 On April 18, 2015, Weatherspoon met J.L., a fifteen-year-old girl, at a marijuana-themed rally in downtown Denver. Weatherspoon was twenty-two years old. Weatherspoon left the rally with J.L. and her friend Sapphire and went to Sapphire's apartment, where they smoked marijuana and drank with several other people. J.L. and Weatherspoon had sex after everyone else fell asleep. Afterward, Weatherspoon told J.L. that he wanted to settle down and get a place to live with someone. J.L. told him that she wanted the same thing. Weatherspoon then told J.L. that there was a way that she could make money for them using the website Backpage.com. J.L. agreed to try it.

¶ 3 Weatherspoon and J.L. left Sapphire's apartment together the next day and got a room at a La Quinta Inn. From the hotel room, Weatherspoon and J.L. posted an advertisement on Backpage.com,

including photos and a description of J.L. The advertisement included J.L.'s telephone number. Weatherspoon instructed J.L. how to respond when men called her after seeing the advertisement, including rates to charge for various sexual acts. Over the next several days, numerous men responded to J.L.'s Backpage.com advertisement and arranged to visit her room at the La Quinta Inn. When these men arrived, J.L. performed sexual acts, including intercourse, with them for money. J.L. gave the money she received to Weatherspoon, who used portions of it to pay for the hotel room and to buy clothes, food, and marijuana for J.L.

¶ 4 On April 30, after receiving information that a possible juvenile was advertising in an online escort service, Investigator Jeff Himes called the number listed in J.L.'s Backpage.com advertisement and scheduled a "date" with her at the La Quinta Inn. When Investigator Himes arrived at J.L.'s hotel room at the scheduled time, he was accompanied by a team of armed police officers. J.L. became upset, tried to flee the room, and hit the officers. She was placed in handcuffs and taken into protective custody.

¶ 5 Investigator Himes then interviewed J.L. at the police station for approximately two hours. A victim's advocate, Anne Darr, met

with J.L. before her interview and was present for portions of the interview. In response to questions asked by Investigator Himes, J.L. described performing lap dances and other sexual acts at the La Quinta Inn in exchange for money, but J.L. denied having intercourse with any of the men. After the interview, J.L. was released into her father's custody.

¶ 6 After J.L. was released, the police contacted J.L.'s father and requested permission to interview J.L. again. J.L.'s father granted permission, and, on May 4, the police came and picked up J.L. and took her to the station, where she was interviewed a second time by Investigator Himes. During her second interview, J.L. admitted to having intercourse in exchange for money, and that Weatherspoon instructed her what to say and do with customers. The May 4 interview lasted approximately forty minutes.

¶ 7 Before trial, Weatherspoon moved to suppress J.L.'s interview statements, arguing that her statements were coerced and that their admission would, therefore, violate his constitutional due process rights. The trial court denied Weatherspoon's motion, concluding that he lacked standing to challenge the admission of

J.L.'s statements on the grounds that *her* constitutional rights were allegedly violated.

¶ 8 J.L. testified at trial. With respect to her police interviews, J.L. testified that she withheld information during her April 30 interview because she did not believe Investigator Himes when he assured her that she was not in trouble. J.L. testified that, after being released into her father's custody after the April 30 interview, she came to realize that she was not, in fact, in trouble with the police. J.L. testified that she decided to return to be re-interviewed on May 4 after her father encouraged her to cooperate with the police.

¶ 9 J.L. also testified about the subject matter described in her police interviews. She testified that Weatherspoon had walked her through the process of posting an advertisement on Backpage.com, arranging "dates" with prospective customers and negotiating the rules for the dates through text messages. J.L. also testified that, when a customer arrived for a date, Weatherspoon would monitor the interaction from down the hallway by listening through a vent that connected to the hotel rooms. J.L. testified that Weatherspoon intervened during a date at least once when a customer was abusive toward her. J.L. also testified that she gave the money she

received for sex to Weatherspoon, and that Weatherspoon used that money to pay for the hotel rooms, and to buy her clothes, food, and marijuana.

II. Analysis

¶ 10 Weatherspoon raises two contentions of error. First, he contends that his constitutional due process rights were violated by the trial court's admission of statements by J.L. Weatherspoon contends that J.L.'s statements were involuntary because they were the product of a coercive police interrogation, and that the trial court erroneously denied his motion to suppress J.L.'s statements. Second, Weatherspoon contends that his conviction for patronizing a prostituted child is unsupported by the evidence. We reject both contentions.

A. Admission of J.L.'s Allegedly Coerced Statements

¶ 11 Weatherspoon contends that the trial court relied on an erroneous view of the law in denying his motion to suppress J.L.'s statements to police for lack of standing. He contends that he had standing to challenge the admission of J.L.'s statements, and that his due process rights were violated by the admission of J.L.'s

allegedly coerced statements. We conclude that, even assuming Weatherspoon had standing, J.L.'s statements were voluntary.

1. Standing

¶ 12 No Colorado court has yet addressed the question whether a defendant has standing to claim a due process violation based on the admission of a witness' allegedly coerced statements to the police. The defendant in *People v. Mares*, 263 P.3d 699 (Colo. App. 2011), claimed that his due process rights were violated by the admission of a witness' statements that were the product of coercive interrogation tactics, but the division in *Mares* merely assumed — without deciding — that the defendant had standing to assert the claim. *Id.* at 707. Because we can decide Weatherspoon's claim without reaching the standing issue by concluding that J.L.'s statements to the police were voluntary, we will also assume without deciding that Weatherspoon had standing to challenge the admissibility of J.L.'s statements as potentially violative of his due process rights.

2. Preservation and Standard of Review

¶ 13 Weatherspoon preserved his claim through his pre-trial motion to suppress J.L.'s statements. A preserved constitutional error

requires reversal unless we are persuaded that the error was harmless beyond a reasonable doubt. *Hagos v. People*, 2012 CO 63, ¶ 11.

¶ 14 When an interrogation is audio or video-recorded, and there are no disputed facts outside the recording pertinent to the suppression issue, we are in the same position as the trial court in determining whether the statements were involuntary. *People v. Ramadon*, 2013 CO 68, ¶ 21.

¶ 15 A trial court's suppression ruling presents a mixed question of fact and law. *Id.* We defer to the trial court's findings of historical fact and will not overturn those findings if they are supported by competent evidence in the record. *People v. Guthrie*, 2012 CO 59, ¶ 10. But we review the legal effect of facts de novo. *People v. Valdez*, 969 P.2d 208, 211 (Colo. 1998).

3. Law

¶ 16 A court will suppress a defendant's confession where it is the product of coercive governmental conduct because the admission of an involuntary statement violates the defendant's due process rights under the Fourteenth Amendment. *Colorado v. Connelly*, 479 U.S. 157, 163 (1986).

¶ 17 In a suppression hearing, when a defendant makes a prima facie evidentiary showing of involuntariness, the prosecution bears the burden by a preponderance of the evidence of establishing that the statements were voluntary. *Ramadon*, ¶ 19.

¶ 18 To be voluntary, "a statement must be the product of an essentially free and unconstrained choice by its maker." *Id.* The "focus of the voluntariness inquiry is whether the behavior of the official was such as to overbear the defendant's will to resist and bring about an admission or inculpatory statement not freely self-determined." *Id.* at ¶ 20.

¶ 19 The voluntariness doctrine requires a two-step inquiry. First, the police conduct must have been coercive. *Id.* Second, the coercive police conduct "must have played a significant role in inducing the statements." *Id.* Courts determine voluntariness by considering the totality of the circumstances under which the statements were given, including

> (1) whether the defendant was in custody; (2) whether the defendant was free to leave; (3) whether the defendant was aware of the situation; (4) whether the police read *Miranda* rights to the defendant; (5) whether the defendant understood and waived *Miranda* rights; (6) whether the defendant had an

> opportunity to confer with counsel or anyone else prior to or during the interrogation; (7) whether the statement was made during the interrogation or volunteered later; (8) whether the police threatened [the] defendant or promised anything directly or impliedly; (9) the method or style of the interrogation; (10) the defendant's mental and physical condition just prior to the interrogation; (11) the length of the interrogation; (12) the location of the interrogation; and (13) the physical conditions of the location where the interrogation occurred.

Id. (quoting *People v. Medina*, 25 P.3d 1216, 1222-23 (Colo. 2001)). These questions apply when the person being questioned is a juvenile, but under such circumstances the courts must also consider the juvenile's age. *People v. N.A.S.*, 2014 CO 65, ¶ 9 (citing *J.D.B. v. North Carolina*, 564 U.S. 261, 264 (2011)).

4. J.L.'s Statements to the Police Were Voluntary

¶ 20 Weatherspoon contends that J.L.'s statements during both of her police interviews were coerced in their entirety. Weatherspoon's coercion argument relies on the circumstances surrounding J.L.'s April 30 police interview — including that J.L. was surrounded by armed police officers in her hotel room, transported to the police station in restraints for a custodial interview, and was visibly upset.

We are not persuaded that J.L.'s statements during either her April 30 or May 4 police interviews were coerced.

¶ 21 Weatherspoon argues that coercion is evident because J.L. was only fifteen years old, was temporarily surrounded in her hotel room by numerous armed police officers, was placed in restraints after she struck an officer while trying to flee from the hotel room, and was never advised of her *Miranda* rights before she was interviewed by police. He also argues that coercion is evident from the fact that J.L. was subject to a lengthy interrogation; was visibly upset during the interview and believed that she was in trouble; and made repeated requests to contact her father, which the police ignored. Based on our review of J.L.'s video-recorded interviews, we conclude that her statements were voluntary.

¶ 22 With respect to J.L.'s April 30 interview, our examination of the videotape reveals no evidence that any of J.L.'s statements were induced by coercive police conduct. Investigator Himes and Ms. Darr were respectful and sensitive to J.L.'s emotional condition. Because J.L. expressed concern over how her father would react when he learned of her situation, Investigator Himes assured J.L. that she would be the first person to speak with her father when he

was contacted — which would be after the interview. J.L. was in restraints when she arrived at the interview room, but they were promptly removed. J.L. was given water, food, and a change of clothes, including a jacket that she wore during the interview. J.L. was seated on a loveseat-style sofa that allowed her to move freely and change positions. Investigator Himes' questions were largely open-ended and not adversarial. He repeatedly assured J.L. that she was not in trouble. The April 30 interview lasted approximately two hours altogether. Importantly, there is no evidence that anyone made any express or implicit threat to J.L. to induce her cooperation. Nor were any promises made to induce J.L. to talk, apart from Investigator Himes' assurance that she would not get in trouble for answering his questions; that promise was kept.

¶ 23 With respect to J.L.'s May 4 interview, we conclude based upon our examination of the videotape and the record that J.L.'s statements were voluntary. J.L. returned for the May 4 interview after being released into her father's custody on April 30. J.L. was not required to return at all. At trial, she testified that she decided to be re-interviewed because she had not been truthful during her April 30 interview. J.L.'s father gave permission for her to return on

May 4, and J.L. testified that her father had encouraged her to cooperate with the police. J.L. testified, however, that she decided to return to be re-interviewed on May 4 after imagining how she would feel if her younger sister were in her situation. Altogether, the May 4 interview lasted only forty minutes. As with the April 30 interview, there is no evidence in the record that J.L. was ever threatened or promised anything to induce her cooperation during the May 4 interview.

¶ 24 For these reasons, we conclude that J.L.'s statements during her April 30 and May 4 interviews at the police station were voluntary.

5. Even Assuming J.L.'s April 30 Interview Statements Were Coerced, Any Error was Harmless

¶ 25 We further conclude that, even assuming that J.L.'s April 30 interview statements were coerced, their admission was harmless error. The record shows that J.L.'s April 30 interview statements were not ultimately used against Weatherspoon at trial.[1] Instead, the prosecution relied on J.L.'s trial testimony and her statements

[1] At trial, J.L.'s April 30 interview statements were used *by defense counsel* to impeach J.L.'s trial testimony.

from her May 4 interview to establish Weatherspoon's culpability. To the extent that J.L. made statements during her April 30 interview tending to incriminate Weatherspoon, we conclude that such statements were cumulative of either J.L.'s trial testimony or her May 4 interview. Thus, even assuming that J.L.'s initial statements to police on April 30 were coerced, we conclude that any error in their admission was harmless beyond a reasonable doubt. *Hagos*, ¶ 11.

B. Weatherspoon's Conviction for Patronizing a Prostituted Child

¶ 26 Weatherspoon also contends that the evidence was insufficient to sustain his conviction for patronizing a prostituted child pursuant to section 18-7-406(1)(a), C.R.S. 2018 — either as a principal or under a complicitor theory of liability. He contends that, to sustain a conviction under section 18-7-406(1)(a) for patronizing a prostituted child as a principal, there must be evidence that he either paid or coerced J.L. to have sex *with him.* Weatherspoon also contends that a conviction under section 18-7-406(1)(a) under a complicitor theory of liability requires evidence that Weatherspoon committed an affirmative act to

facilitate the crime. We conclude that sufficient evidence supported Weatherspoon's conviction for patronizing a prostituted child.

1. Preservation and Standard of Review

¶ 27 Weatherspoon preserved his claim by making a motion for judgment of acquittal as to the offense of patronizing a prostituted child. When reviewing the denial of a motion for a judgment of acquittal, we "review the record de novo to determine whether the evidence before the jury was sufficient both in quantity and quality to sustain the convictions." *Montes-Rodriguez v. People*, 241 P.3d 924, 927 (Colo. 2010) (quoting *Dempsey v. People*, 117 P.3d 800, 807 (Colo. 2005)).

2. Law

¶ 28 Weatherspoon was convicted of patronizing a prostituted child pursuant to section 18-7-406(1)(a), which provides:

> (1) Any person who performs any of the following with a child not his spouse commits patronizing a prostituted child:
>
> (a) Engages in an act which is prostitution of a child or by a child, as defined in section 18-7-401(6) or (7);

¶ 29 Section 18-7-401(7), C.R.S. 2018, defines "prostitution of a child" as

> either inducing a child to perform or offer or agree to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with any person not the child's spouse by coercion or by any threat or intimidation or inducing a child, by coercion or by any threat or intimidation or in exchange for money or other thing of value, to allow any person not the child's spouse to perform or offer or agree to perform any act of sexual intercourse, fellatio, cunnilingus, masturbation, or anal intercourse with or upon such child. Such coercion, threat, or intimidation need not constitute an independent criminal offense and shall be determined solely through its intended or its actual effect upon the child.

3. Weatherspoon's Conviction for Patronizing a Prostituted Child was Supported by Sufficient Evidence

a. Principal Theory of Liability

¶ 30 We conclude that Weatherspoon's conviction for patronizing a prostituted child as a principal was supported by evidence showing that he induced J.L. to have sex with other men in exchange for money. Weatherspoon contends that liability as a principal under section 18-7-406(1)(a) requires evidence that Weatherspoon himself induced J.L. to have sex *with him* in exchange for money or other items of value. We reject Weatherspoon's construction of the law and conclude that, under our supreme court's interpretation of

section 18-7-406(1)(a) in *People v. Madden*, 111 P.3d 452 (Colo. 2005), the evidence was sufficient to support Weatherspoon's conviction for patronizing a prostituted child as a principal.

¶ 31 In *Madden*, the supreme court explained that "to be convicted of patronizing a prostituted child the defendant must be engaged in a commercial activity where he either gives *or receives* something of value in exchange for a child engaging in sex." *Id.* at 458 (emphasis added). Weatherspoon argues on appeal that his conviction is unsupported because there was no evidence showing that he *gave* something of value in exchange for J.L. engaging in sex.[2] But such evidence is not required. The supreme court explained in *Madden* that section 18-7-406(1)(a) liability attaches to anyone who gives *or* receives value in exchange for a child having sex. *Id.* at 459-60.

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[2] Weatherspoon's argument appears to implicitly rest on the common and ordinary meaning of the term "patronize." The crux of his argument is that the evidence was insufficient because it did not show that he was ever J.L.'s customer. But the supreme court in *Madden* also recognized that "[t]he common and ordinary meaning of 'patronize' is 'to be a regular customer of (a store, merchant, etc.).'" *People v. Madden*, 111 P.3d 452, 459 (Colo. 2005) (quoting Webster's New World College Dictionary 991 (3rd ed. 1996)). Nevertheless, the supreme court construed section 18-7-406(1)(a), C.R.S. 2018, as applicable to anyone who either gives *or* receives value in exchange for a child engaging in sex. *Madden*, 111 P.3d at 459-60.

Here, the evidence established that Weatherspoon *received* value in exchange for J.L. having sex. We conclude, therefore, that sufficient evidence supported Weatherspoon's conviction as a principal for patronizing a prostituted child.

b. Complicitor Theory of Liability

¶ 32 We conclude further that sufficient evidence supported Weatherspoon's conviction for patronizing a prostituted child under a complicitor theory of liability.

¶ 33 Under a complicitor theory of liability, a person may be held accountable for a criminal offense committed by someone else. § 18-1-603, C.R.S. 2018. Complicity is not a separate and distinct crime or offense, but, rather, a theory holding a defendant accountable for a criminal offense committed by another. *Grissom v. People*, 115 P.3d 1280, 1283 (Colo. 2005). Complicitor liability requires two things of the complicitor: (1) an intent to aid the principal in his criminal act or conduct, as distinguished from an intent to aid him in causing a particular result; and (2) an awareness of the circumstances attending the principal's conduct, including any required mental state of the principal. *People v. Childress*, 2015 CO 65M, ¶¶ 34-35.

¶ 34 On appeal, Weatherspoon argues that, to be convicted as a complicitor under section 18-7-406(1)(a), the prosecution must have presented evidence that he received something of value from a customer in exchange for J.L. having sex with the customer. But Weatherspoon's argument is unsupported by the law, and the evidence presented at trial supported Weatherspoon's conviction as a complicitor because it established both elements of complicitor liability. *Id.* at ¶ 29.

¶ 35 At trial, the prosecution presented evidence at trial showing that Weatherspoon took sexually suggestive photographs of J.L. and used them to create a Backpage.com advertisement, which he paid for; instructed J.L. what to write in the Backpage.com advertisement; rented a hotel room with two beds — one bed for he and J.L. to sleep on and a second bed for J.L. to engage in sexual acts with customers; coached J.L. on how to interact with customers and potential customers; and monitored J.L.'s interactions with customers by listening through a vent connected to the hotel room. In our view, the jury could reasonably infer from this evidence both that Weatherspoon intended to aid potential

customers in paying J.L. for sex and that Weatherspoon was aware that the potential customers intended to pay J.L. for sex. *Id.*

III. Conclusion

¶ 36 For these reasons, we are not persuaded either that the admission of J.L.'s statements to police violated Weatherspoon's constitutional due process rights, or that Weatherspoon's conviction for patronizing a prostituted child was unsupported by the evidence. We, therefore, affirm.

JUDGE WEBB and JUDGE HARRIS concur.

Colorado Court of Appeals 2 East 14th Avenue Denver, CO 80203	DATE FILED: August 22, 2019 CASE NUMBER: 2016CA1627
Arapahoe County 2015CR1355	
Plaintiff-Appellee: The People of the State of Colorado, **v.** **Defendant-Appellant:** Matthew Davonn Weatherspoon.	Court of Appeals Case Number: 2016CA1627
MANDATE	

This proceeding was presented to this Court on the record on appeal. In accordance with its announced opinion, the Court of Appeals hereby ORDERS:

JUDGMENT AFFIRMED

POLLY BROCK
CLERK OF THE COURT OF APPEALS

DATE: AUGUST 22, 2019

APPENDIX A

Colorado Supreme Court 2 East 14th Avenue Denver, CO 80203	DATE FILED: August 19, 2019 CASE NUMBER: 2019SC41
Certiorari to the Court of Appeals, 2016CA1627 District Court, Arapahoe County, 2015CR1355	
Petitioner: Matthew Weatherspoon, **v.** **Respondent:** The People of the State of Colorado.	Supreme Court Case No: 2019SC41
ORDER OF COURT	

Upon consideration of the Petition for Writ of Certiorari to the Colorado Court of Appeals and after review of the record, briefs, and the judgment of said Court of Appeals,

IT IS ORDERED that said Petition for Writ of Certiorari shall be, and the same hereby is, DENIED.

BY THE COURT, EN BANC, AUGUST 19, 2019.

APPENDIX B