

IN THE COURT OF APPEALS OF IOWA

No. 3-999 / 12-2043
Filed November 20, 2013

STATE OF IOWA,
Plaintiff-Appellee,

vs.

CORNOVIS ABRAMS TEASLEY,
Defendant-Appellant.

Appeal from the Iowa District Court for Cerro Gordo County, Stephen P. Carroll, Judge.

A defendant contends there was insufficient evidence to establish his age and, accordingly, the difference in age required to prove him guilty of third-degree sexual abuse. **AFFIRMED.**

Mark C. Smith, State Appellate Defender, and Dennis D. Hendrickson, Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Jean C. Pettinger, Assistant Attorney General, Carlyle D. Dalen, County Attorney, and Chandra Peterson, Student Legal Intern, for appellee.

Considered by Vaitheswaran, P.J., and Potterfield and Danilson, JJ.

VAITHESWARAN, P.J.

The State charged Cornovis Teasley with third-degree sexual abuse of a fourteen-year-old girl. The jury was instructed that, to find him guilty, the State would have to establish the following elements:

1. On or about the 27th day of August, 2011, the defendant performed a sex act with [the child]; and
2. The defendant performed a sex act:
 - a. By force or against the will of [the child]; or
 - b. While [the child] was 14 or 15 years old, the defendant was four or more years older, and the defendant and [the child] were not then living together as husband and wife.

The jury unanimously found guilt under alternative 2(b)—the defendant was “four or more years older” than the fourteen-year-old victim. See Iowa Code § 709.4(2)(c)(4) (2011). On appeal, Teasley contends there was insufficient evidence to establish his age and, accordingly, the difference in age required in element 2(b).

As a preliminary matter, there is some question as to whether we may consider evidence presented by the defense in determining whether there is sufficient evidence of a defendant’s age. Our appellate courts have done so. See *State v. Olson*, 149 N.W.2d 132, 135 (Iowa 1967) (considering defendant’s testimony in deciding whether evidence was sufficient to establish he was over the age of eighteen); *State v. Thompson*, 365 N.W.2d 40, 43 (Iowa Ct. App. 1985) (same). The State asserts that, if we were to do so here, we easily could resolve Teasley’s sufficiency-of-the-evidence challenge because Teasley took the stand and testified to his birthday and age. The State notes, however, that this court has questioned reliance on defense evidence in determining whether the State has proved its case. See *State v. Nino-Estrada*, No. 11-1741, 2012 WL

4513874, at *6 (Iowa Ct. App. Oct. 3, 2012) (“We find no Iowa precedent that would allow us to consider evidence presented in the defense case to supply missing elements necessary for the State to carry its burden of proof.”). For purposes of our analysis, we will assume without deciding that we are limited to the State’s evidence in determining whether the State satisfied the difference-in-age element.

That evidence reveals the following pertinent facts. The complaining witness testified she was fourteen years old at the time of her encounter with Teasley. She also testified that, after Teasley sexually abused her, he began to cry and told her he had kids her age. Another witness testified that he was nineteen years old and Teasley was “older.” Finally, Teasley was in the courtroom and subject to observation by the jury, and the jury reasonably could have surmised that he looked to be over four years older than the complaining witness. See *Thompson*, 365 N.W.2d at 43 (considering, among other factors, the defendant was in the courtroom during the trial).

Because a reasonable juror could have found that Teasley was four or more years older than the fourteen-year-old victim, we affirm Teasley’s judgment and sentence for third-degree sexual abuse.

AFFIRMED.