

STATE v. PHILLIP RUSSO, AC 45314
Geographical Area No. 9 at Middletown

Criminal; Second Degree Sexual Assault; Statutory Interpretation; Whether Trial Court Properly Concluded That Defendant Was a "School Employee" Under § 53a-71 (a) (8); Whether General Statutes § 53a-71 (a) (8) Is Unconstitutionally Broad. The victim was a high school senior who played on the soccer team, and the defendant was an assistant coach. The defendant claims that, after the soccer season concluded in November, 2018, he began a sexual relationship with the victim, and the relationship continued into 2019. On June 6, 2019, the defendant met with school officials to discuss his relationship with the victim, and he resigned his position. The defendant was arrested and charged with one count of second degree sexual assault in violation of General Statutes § 53a-71 (a) (8), which prohibits sexual intercourse between a "school employee" and student within the same school system. The defendant moved to dismiss the charge on two grounds: (1) the affidavit supporting arrest warrant did not establish probable cause that he was a "school employee" as defined by General Statutes § 53a-65 (13), and (2) the statute is "vague" and "overbroad" in violation of the state and federal constitutions. As to the lack of probable cause, the defendant argued that his sexual relationship with the victim did not start until after the soccer season ended, which he argued is when his employment with the school ended as well. Because he was not employed by the school at the time the sexual relationship started, the defendant argued that he did not meet the statutory definition of "school employee" and, therefore, could not have violated § 53a-71 (a) (8) as alleged in the warrant affidavit. He went on to argue that the statute is unconstitutional because it punishes many generally accepted relationships, such as, for example, a school employee in a relationship with another adult attending local night classes. The trial court denied the motion to dismiss after finding that "whether the defendant was [a school] employee is a factual question" for trial and that his challenge to the constitutionality of the statute is better addressed when discussing the jury's instructions. Pursuant to General Statutes § 54-94a, the defendant pleaded no contest to the charge so that, without first going to trial, he can bring this appeal and immediately challenge the denial of his motion to dismiss. On appeal, the defendant continues to argue that the trial court erred in failing to dismiss the charge because the arrest warrant affidavit did not establish that he was a "school employee" at the time of his sexual relationship with the victim, as his employment as an assistant coach had already ended. The state claims that the defendant used an improper procedure in the trial court to challenge the charge and that the trial court properly denied the motion to dismiss in light of other facts that were not alleged in the affidavit that the court was permitted to consider, such as that the defendant attended team events and engaged in discussions with the head coach after November, 2018. The defendant also claims that his conviction should be reversed because the statute is unconstitutionally overbroad, and, again, he gives examples of relationships that he maintains are generally acceptable but nonetheless prohibited by § 53a-71 (a) (8). The state responds that these hypothetical examples alone do not make the statute unconstitutional and also argues that the defendant's constitutional claim is unreviewable because the trial court did not reach it. If reviewable, the state argues that the statute is constitutional because it properly criminalizes the "inherently coercive relationship" between a student and school faculty.