

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT  
ADAMS COUNTY, ILLINOIS

PEOPLE OF THE STATE OF	)	
ILLINOIS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	NO. 2021-CF-396
	)	
DREW CLINTON,	)	
	)	
Defendant.	)	

**SENTENCING HEARING**

REPORT OF PROCEEDINGS of the hearing before the  
HONORABLE ROBERT K. ADRIAN on January 3, 2022.

**APPEARANCES:**

HON. GARY L. FARHA, by  
MS. ANITA M. RODRIGUEZ,  
Assistant State's Attorney,  
for the People of the State of Illinois.

MR. ANDREW C. SCHNACK III,  
Attorney at Law,  
for the Defendant.

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PROCEEDINGS

THE COURT: We are taking up 21-CF-396, People versus Drew Clinton. Mr. Clinton appears in custody and with counsel, Mr. Drew Schnack. People appear by Assistant State's Attorney Anita Rodriguez. We are here today for a sentencing hearing. We also have post-trial motions that were filed by the Defendant after the Court held a bench trial.

And I see we have several people in the courtroom today. And I would admonish everybody that emotions in these types of cases tend to run high, that people once in a while will lose control of their emotions and will make outbursts or show emotions, will start shaking their heads, will do things that the Court finds disruptive. And if anyone is in that category and does not believe that they can control their emotions and not have any outbursts or not show their emotion in the courtroom, then you should leave right now and wait outside. Because otherwise, if I -- if you start showing emotions, if we start having outbursts or anything like that, then you will be removed from the courtroom, and we don't want that to happen.

1 So please try and keep your emotions under control.

2 And then, as I said, today we are set for  
3 a sentencing hearing as well as post-trial motions  
4 that were filed. I believe from reviewing the  
5 record that there are two post-trial motions that  
6 were filed by the Defendant.

7 Mr. Schnack, I'm going to have you argue  
8 each one separately, I'm going to let the People  
9 respond, and then we will move on to the other  
10 motion. And then, Mr. Schnack, which motion would  
11 you like to argue first?

12 MR. SCHNACK: Judge, I think the quickest one  
13 would be the motion dealing with the mandatory  
14 minimum sentence.

15 THE COURT: All right. You may be heard.

16 MR. SCHNACK: Thank you.

17 May it please the Court. I know I've made  
18 this argument to this Court and other courts, so  
19 I'm not going to take up a lot of your time. But  
20 it is my opinion -- and I would ask the Court to  
21 concur with my opinion -- that the mandatory  
22 sentencing provisions of this act are an invasion  
23 of the legislative portion or arm of our government  
24 into the judicial portion of our government. While

1 the legislature has its job, and its job is to make  
2 the laws obviously, when it imposes upon the court  
3 mandatory minimums, in my opinion it invades the  
4 province of the court. I firmly believe that every  
5 individual should be judged by the court in doing  
6 its sentence and not by a legislator years and  
7 hundreds of miles removed.

8           It is the courts, the judges, who hear the  
9 trials. It is the court and the judges who have  
10 the pretrial reports in front of them. It is the  
11 judges who see the demeanor of all parties. And it  
12 is the judges who are best suited to impose  
13 sentences on an individual basis rather than a  
14 piecemeal, if you do this, this is what you get.

15           I felt that way since I started practicing  
16 law when we got the "get tough with crime" under  
17 Governor Thompson and they gave us the Class X  
18 felonies, and I continue to feel that way as that  
19 invasion continues to occur in more and more and  
20 more cases. I guess a good example is the case out  
21 in Colorado where the trucker got 120-some years  
22 because the court didn't have the discretion to do  
23 anything about it, and that's a paraphrase.

24           And so I wanted -- I am making a record

1 here, and I do believe that this is a legislative  
2 interference with the judicial process, and I would  
3 ask the Court to consider that.

4 Thank you.

5 THE COURT: Thank you, Mr. Schnack.

6 Ms. Rodriguez, you wish to be heard?

7 MS. RODRIGUEZ: Your Honor, I have filed a  
8 written response to this motion regarding the  
9 constitutionality of the statute, so I would mostly  
10 repeat what I have already put forth in writing.

11 Defense indicates they're challenging the  
12 constitutionality of the statute under which the  
13 Defendant was convicted. He was convicted under  
14 the criminal sexual assault statute which just  
15 provides that criminal sexual assault is a Class 1  
16 felony and doesn't provide that the sentencing to  
17 Department of Corrections is mandatory. I think  
18 what the Defense is actually challenging is the two  
19 sentencing provisions that I've set forth in my  
20 response which provide that the -- that probation  
21 is not -- can't be imposed for criminal sexual  
22 assault.

23 So given that fact, I think actually what  
24 he's contesting is the sentencing provisions and

1 not the statute under which he's convicted. First  
2 of all, the Defendant doesn't indicate whether he's  
3 challenging the constitutionality on its face or  
4 whether it's on an as-applied constitutional  
5 challenge. For a facial challenge to apply, the  
6 Defendant has to show that the statute is  
7 unconstitutional under any possible set of facts,  
8 and that certainly is nothing that's been shown  
9 here.

10 If what he is challenging is an as-applied  
11 challenge saying that it's unconstitutional as  
12 applied to Mr. Clinton, we're not even there yet.  
13 He hasn't even been sentenced yet. So I don't know  
14 if he's challenging the sentencing provision as  
15 being unconstitutional as applied to this  
16 Defendant. I don't think we're even there yet.

17 But there simply is no -- under the case  
18 law that I've cited, the primary challenge is to  
19 mandatory sentencing provisions have to do with 18-  
20 or 19-year-old defendants who have been convicted  
21 of murder or some other type crime who have been  
22 sentenced to such lengthy periods of time that it  
23 amounts to a life sentence. That is certainly not  
24 what we're facing here, and there's simply no basis

1 for the Court to grant his motion with respect to  
2 the constitutionality of the statute.

3 THE COURT: Thank you, Ms. Rodriguez.

4 Mr. Schnack, you wish to be heard further?

5 MR. SCHNACK: No, Your Honor.

6 THE COURT: All right. Court is going to wait  
7 to rule on all the motions.

8 Mr. Schnack, you may be heard on your  
9 second motion.

10 MR. SCHNACK: Thank you, Your Honor.

11 May it please the Court and counsel.  
12 Judge, at the conclusion of this trial we went  
13 straight into closing arguments. And while I made  
14 my arguments, I feel as though I could have done a  
15 better job in stressing to the Court where we were  
16 coming from on the issue.

17 The question in this case is the portion  
18 of the statute where the defendant knows the  
19 victim, is unable to understand the nature of the  
20 act, or is unable to give knowing consent. A  
21 review of the evidence in this matter, Your Honor,  
22 I would suggest to the Court, leaves us with the  
23 inescapable conclusion that the State failed to  
24 meet its burden of proof beyond a reasonable doubt.

1           Backtracking and why I say that, while  
2 there was ample evidence, contradictory evidence,  
3 as to how much the alleged victim had to drink in  
4 this matter, the unrebutted evidence is the most  
5 she had was six little shooter things. There is no  
6 evidence as to when she stopped consuming alcohol.  
7 There is some evidence, contradictory, that it was  
8 at seven o'clock or eight o'clock or nine o'clock  
9 at night or maybe even later. But it's clear that,  
10 from at least the testimony that I heard, she'd  
11 stopped drinking alcohol, the six little shooter  
12 things, by midnight or early in the evening. And  
13 then it's clear and the evidence is that she  
14 vomited. She also, I believe, testified that she  
15 hadn't had anything to eat.

16           So the question becomes was she  
17 intoxicated where she couldn't give consent, or was  
18 she simply sick from drinking vodka or drinking  
19 these drinks on an empty stomach? And there isn't  
20 any evidence to tell us that she was intoxicated.  
21 We have no BAC. We have no blood alcohol. We have  
22 nothing from the hospital when she finally got  
23 there as to what her blood alcohol content was, and  
24 extrapolation backwards in time, we simply have



1 nothing to indicate that she was intoxicated to the  
2 point where she could not give consent or didn't  
3 know what was going on, my paraphrase of the  
4 statute.

5           In addition, Your Honor -- and I stress  
6 this -- this young lady had been making decisions  
7 all night long for herself, and they were agreed to  
8 by literally everyone that was around her. They  
9 weren't the best decisions. To let her make her  
10 own decisions wasn't necessarily, but that is what  
11 had happened. The young lady made her decision to  
12 go to the party and to furnish alcohol. The young  
13 lady made her decision to go swimming at the party.  
14 The young lady made her decision to take off her  
15 clothes and swim in her underwear at the party.

16           And nobody said you don't want to do this  
17 or you shouldn't do this or you're not capable of  
18 making a rational decision, you know, don't do it.  
19 They simply allowed her to continue on making her  
20 decisions and acquiescing to those decisions.  
21 Whether they were right or wrong, they were  
22 acquiesced to. So, clearly, everyone around her  
23 believed that she was capable of making her --  
24 these decisions for herself.

1           Then to take it the next step, as she got  
2 out of the pool, she, you know, either passed out  
3 or fell asleep or laid down on the concrete. Then  
4 she got up and went over by the house, and she was  
5 throwing up, and she was tended to apparently by a  
6 nurse or some other adults who were present. The  
7 un rebutted testimony is the adults there wanted her  
8 out. They didn't want her at the party any longer  
9 and wanted her to go home.

10           But she made the decision. She told  
11 everybody she didn't want to go home. That's what  
12 her friends have told us, and parenthetically I  
13 think that's what she told us. So she made the  
14 decision that I don't want to go home. I would  
15 guess she didn't want to be confronted by her  
16 father or the people at home in the condition that  
17 she was in or at the time that she was out. She  
18 was out past curfew. But she made that decision,  
19 and the people around her acquiesced to that  
20 decision apparently believing that she was in a  
21 condition that she could make up her own mind as to  
22 what was best for her.

23           Then when the car got to the home, she  
24 made the decision she wanted to stay in the car.

1 The driver of the car and everybody in the car  
2 acquiesced to that decision, and they let her sit  
3 there for I believe it was a half an hour. It may  
4 have been even longer than that. The young man was  
5 being consoled because his dog died. But the --  
6 again, all of her friends acquiesced to her  
7 decision to stay there in the car.

8           Then when it was time to finally go into  
9 the house, she's the one that went into the house.  
10 And there's a prior inconsistent statement in the  
11 police report. The one witness told the officer  
12 that she was talking to the people when she was  
13 inside of the house. At trial, she said she wasn't  
14 talking to the people inside the house. But I  
15 think -- you know, logic tells us that what was  
16 told to that officer originally is what is the  
17 truth even though it's contradicted by a prior  
18 inconsistent statement or a subsequent inconsistent  
19 statement. And she was talking to the people  
20 there.

21           So this young lady had been making  
22 decisions all night long literally to everyone  
23 around her. Some young people, some adults, some  
24 trained professional acquiesced to her decisions,

1 and I think by a course of conduct, that's telling  
2 us that she knew what she was doing and was able to  
3 make decisions for herself, and that's what she had  
4 done all night long.

5           Then when we get into the basement area,  
6 she, of course, is eventually left alone with my  
7 client. She says she doesn't remember what  
8 happened there. Therefore -- I'll go on. She says  
9 she doesn't remember what happened there, and some  
10 of her account is contradicted completely by DNA  
11 evidence, the scientific evidence that was  
12 presented to the Court.

13           But in addition, my client, whose  
14 credibility and whose demeanor you were able to  
15 observe, has always made the same statement. He  
16 went to the police station, and he sat there for a  
17 long time, and he was interviewed, and he told them  
18 what occurred. He got in -- came into court and  
19 told us what occurred.

20           And he fully believed then, he fully  
21 believes now, and the unrebutted testimony is that  
22 she knew what was going on, she was capable of  
23 consenting, she somewhat participated in the act,  
24 and therefore, being consistent with everything

1 else that had happened, she was able to consent.

2 She did know what was going on.

3 And my client should be found not guilty,  
4 especially when you consider that the only evidence  
5 you have before you as to what occurred in that  
6 basement is the testimony of the young lady who  
7 says she doesn't remember and the testimony of my  
8 client that says she clearly consented.

9 And given the fact that the State has the  
10 burden of proof beyond a reasonable doubt on that  
11 issue, I'd suggest to the Court that they did fail  
12 to meet their burden of proof, and I would ask the  
13 Court to reconsider it's ruling and find my client  
14 not guilty.

15 Thank you.

16 THE COURT: Thank you, Mr. Schnack.

17 Ms. Rodriguez.

18 MS. RODRIGUEZ: Your Honor, with regard to the  
19 post-trial motion, first of all, with respect to  
20 the weight of the evidence, I certainly disagree  
21 with Mr. Schnack's entire argument. There was  
22 conflict in the evidence. There was certainly a  
23 lot of evidence regarding the level of intoxication  
24 of the victim in this case.

1           There was also her direct testimony that  
2 she was -- she was asleep, she awoke to a pillow  
3 being pushed on her face, and she was being  
4 sexually assaulted, and that she at no time gave  
5 consent and that, in fact, earlier in the evening  
6 she had specifically indicated that she did not  
7 want any sexual contact with this Defendant.

8           So the Court has already resolved those  
9 issues. The Court's decision was not against the  
10 manifest weight of the evidence and, in fact, it  
11 was very much supported by the evidence that was  
12 presented.

13           I want to address the additional basis  
14 under the post-trial motion. The manifest weight  
15 of the evidence was just one prong of that motion.  
16 Mr. Schnack has also indicated that, made  
17 prejudicial comments and erroneous statements in my  
18 closing argument, but he fails to state what those  
19 comments or statements were.

20           He also indicates the Defendant was denied  
21 due process of law but doesn't specify how he was  
22 denied due process of law.

23           He also indicates the Defendant was denied  
24 equal protection of the laws but, again, does not

1 indicate how the Defendant was denied equal  
2 protection of the laws.

3 And, finally, he indicates that the  
4 verdict was a result of passion, bias, and  
5 prejudice from the witnesses and their testimony  
6 was inconsistent. Again, he doesn't indicate how  
7 the witnesses were biased or prejudiced or the  
8 basis for that.

9 So I would simply ask the Court to deny  
10 these post-trial motions.

11 THE COURT: Thank you, Ms. Rodriguez.

12 Mr. Schnack.

13 MR. SCHNACK: Nothing further, Your Honor. I  
14 think I've made my points.

15 THE COURT: The Court has considered the  
16 motions. The Court has considered the arguments of  
17 counsel and the written motions themselves. This  
18 Court is required to do justice. This Court is  
19 required to do justice by the public, it's required  
20 to do justice by me, and it's required to do  
21 justice by God.

22 It's a mandatory sentence to the  
23 Department of Corrections. This happened when this  
24 teenager -- because he was and is a teenager, was

1 two weeks past 18 years old. He has no prior  
2 record, none whatsoever. By law, the Court is  
3 supposed to sentence this young man to the  
4 Department of Corrections. This Court will not do  
5 that. That is not just. There is no way for what  
6 happened in this case that this teenager should go  
7 to the Department of Corrections. I will not do  
8 that.

9           The Court could find that the sentencing  
10 statute for this offense is unconstitutional as  
11 applied to this Defendant. But that's not going to  
12 solve the problem because, if the Court does that,  
13 this Court will be reversed by the Appellate Court,  
14 and Mr. Clinton will end up in the Department of  
15 Corrections.

16           Mr. Clinton has served almost five months  
17 in the county jail, 148 days. For what happened in  
18 this case, that is plenty of punishment. That  
19 would be a just sentence. The Court can't do that.

20           But what the Court can do, because this  
21 was a bench trial, the Court will find that the  
22 People failed to prove their case on Count 3. The  
23 Court is going to reconsider its verdict, is going  
24 to find the Defendant not guilty on Count 3. And,



1   therefore, the case -- the Defendant will be  
2   released from custody.  Bond will be discharged.

3               And the other thing I want to say is I  
4   cannot believe that adults that were involved in  
5   this case, parents and other adults who was  
6   involved in this case, took their responsibilities  
7   so lightly for these teenage kids.  I cannot  
8   believe the permissiveness and the lack of  
9   responsibility taken by everyone involved in this  
10  case.

11              This is what's happened when parents do  
12  not exercise their parental responsibilities, when  
13  we have people, adults, having parties for  
14  teenagers, and they allow coeds and female people  
15  to swim in their underwear in their swimming pool.  
16  And, no, underwear is not the same as swimming  
17  suits.  It's just -- they allow 16-year-olds to  
18  bring liquor to a party.  They provide liquor to  
19  underage people, and you wonder how these things  
20  happen.  Well, that's how these things happen.  The  
21  Court is totally disgusted with that whole thing.

22              And, Mr. Clinton, you're going to be  
23  released.  Go home if you still have one.

24              This case is adjourned.  The Court will

1 take the order in chambers.

2 (Which was all the evidence offered  
3 and received and all other proceedings had on the  
4 hearing of said cause.)

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IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT  
ADAMS COUNTY, ILLINOIS

CERTIFICATE OF REPORTER

I, Kim Cottrell, Official Court Reporter for  
the Circuit Court of Adams County, Eighth Judicial  
Circuit of Illinois, certify the foregoing to be a  
true and accurate transcript of the testimony and  
proceedings in the above-entitled cause.



OFFICIAL COURT REPORTER-----

Dated this 4th day  
of January, 2022.