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2011 IL App (3d) 090900-U

Order filed July 21, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
Plaintiff-Appellee,)	Rock Island County, Illinois,
)	
v.)	Appeal No. 3-09-0900
)	Circuit No. 07-CF-839
)	
DAVID P. SEIBERT,)	Honorable
)	Charles H. Stengel,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

- ¶ 1 *Held:* The defendant's conviction for aggravated criminal sexual assault was upheld on appeal because the defendant's bodily harm to the victim occurred contemporaneously with his sexual assault of the victim.
- ¶ 2 Following a jury trial, the defendant, David P. Seibert, was convicted of one count of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(2) (West 2006)) and three counts of criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2006)). He was sentenced to 18 years' imprisonment for the aggravated criminal sexual assault,

consecutive to three 15-year concurrent terms of imprisonment for the criminal sexual assaults. The defendant appealed, arguing that his conviction for aggravated criminal sexual assault had to be vacated because the alleged bodily harm did not happen during a sexual assault. We affirm.

¶ 3

FACTS

¶ 4

The defendant was charged with four counts of aggravated criminal sexual assault, three counts of criminal sexual assault, and one count of unlawful restraint. The case proceeded to a jury trial.

¶ 5

The victim testified that the defendant was her ex-husband. They had been estranged for several months, and living in separate homes, when the defendant contacted the victim by telephone during the afternoon of September 1, 2007. Later that evening, around 11:45 p.m., the defendant knocked at her door. The victim testified that she let him in, and he followed her back to her bedroom. The defendant was angry because the victim was not wearing her wedding ring and her bed was unmade. The defendant accused the victim of having sexual intercourse with someone else. The victim returned to her living room. She started screaming, and the defendant ran over to where the victim was sitting and starting slapping her in the face. Her lip and nose started bleeding. The defendant pushed her down to the floor, and held his hand over her mouth until the victim almost lost consciousness. The defendant let the victim go after she stopped screaming, and the victim grabbed a rag to stop the bleeding.

¶ 6

The victim testified that they returned to the bedroom, where she started screaming again. The defendant grabbed her by her boxer shorts and slammed her into a

closet, bruising her back and causing her to urinate on herself. The victim stated that the defendant then inserted his finger into her vagina. Then, the defendant allowed the victim to take a shower, continually accusing the victim of having a relationship with another man. After returning to the victim's bedroom, the defendant ordered the victim to masturbate, while he watched for about 20 minutes. Then the defendant had forcible vaginal intercourse with the victim. The defendant threatened that if the victim screamed, he would put a pillow over her face and smother her. Afterward, the victim grabbed the mace on her night stand, and sprayed the defendant. However, even though they were both gagging, the defendant again had forcible sexual intercourse with her. The victim testified that the defendant forced her to have vaginal intercourse a total of five times. When the defendant fell asleep around 7:45 a.m., the victim grabbed her keys and ran out of the apartment.

¶ 7 The defendant testified that he was at a party the night of September 1, 2007. He testified that he drove to the victim's residence around 5 a.m. on September 2. The defendant claimed that he was upset with the victim because he found a triple beam scale and at least two pounds of cocaine in the victim's apartment. When he attempted to leave with the cocaine, the victim began assaulting him. The defendant testified that he had sexual relations twice with the victim, at her request. While he was in the shower, the victim left with the cocaine.

¶ 8 The defendant was convicted of one count of aggravated criminal sexual assault, the charge that, by the use of force, he placed his penis in the vagina of the victim and in so doing caused bodily harm to the victim by smothering her and hitting her in the face.

The defendant was also convicted of three counts of criminal sexual assault. The trial court sentenced the defendant to 18 years in prison for aggravated criminal sexual assault, consecutive to three 15-year concurrent sentences for the criminal sexual assault offenses. The defendant's motion for a new trial was denied, and he appealed.

¶ 9

ANALYSIS

¶ 10

The defendant argues that his conviction for aggravated criminal sexual assault must be vacated because the alleged bodily harm did not occur during the sexual assault. The State contends that the conviction was proper because bodily harm occurred during the ongoing sexual assault.

¶ 11

The defendant's challenge is to the sufficiency of the evidence at trial. Due process requires proof of guilt beyond a reasonable doubt to convict a criminal defendant. *People v. Cunningham*, 212 Ill. 2d 274 (2004). When reviewing a challenge to the sufficiency of the evidence, a reviewing court must determine whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *People v. Pollock*, 202 Ill. 2d 189 (2002). The role of the reviewing court is not to retry the defendant; it remains the responsibility of the trier of fact to determine the credibility of witnesses, the weight to be given their testimony, and the reasonable inferences to be drawn from the evidence. *People v. Milka*, 211 Ill. 2d 150 (2004). A conviction will be reversed when there is a reasonable doubt as to the defendant's guilt because the evidence is so unreasonable, improbable, or unsatisfactory. *Pollock*, 202 Ill. 2d 189.

¶ 12

A defendant commits aggravated criminal sexual assault when he or she commits

criminal sexual assault and causes bodily harm to the victim during the commission of the offense. 720 ILCS 5/12–14(a)(2) (West 2006); *People v. Bishop*, 218 Ill. 2d 232 (2006). The order in which the sexual assault and the bodily harm occurred is not significant; what is significant is that the infliction of the bodily injury occurred during or as part of the sexual assault. *People v. Lamon*, 346 Ill. App. 3d 1082 (2004); see *People v. Thomas*, 234 Ill. App. 3d 819 (1992) (bodily harm that occurred very near in time to forced sex acts was part of an unbroken series of events that supported charge of aggravated criminal sexual assault).

¶ 13 The defendant was convicted of the charge that he had forcible vaginal intercourse with the victim, and, in doing so, the defendant caused the victim bodily harm by smothering her and hitting her in the face. The victim’s testimony established an unbroken series of events during one night in the victim’s home that included the defendant slapping the victim about the face, smothering her with his hand, forcing her to have vaginal intercourse, and, at a minimum, subjecting the victim to three other forced sex acts. After reviewing the evidence in the light most favorable to the State, we conclude that the evidence was sufficient to prove that the bodily harm was contemporaneous to the criminal sexual assault. We find that the trial court’s decision of guilt on the charge of aggravated criminal sexual assault beyond a reasonable doubt was not unreasonable or improbable.

¶ 14 CONCLUSION

¶ 15 The judgment of the circuit court of Rock County is affirmed.

¶ 16 Affirmed.