

No. 1-10-2932

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 05 CR 28068
	)	
DOUGLAS LEMON,	)	Honorable
	)	Neera Lall Walsh,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE CONNORS delivered the judgment of the court.  
Presiding Justice Quinn and Justice Cunningham concurred in the judgment.

**ORDER**

¶ 1 *Held:* The State presented sufficient evidence to prove defendant committed aggravated criminal sexual assault and aggravated kidnaping. The trial court's judgment finding defendant guilty is affirmed.

¶ 2 Following a bench trial, defendant Douglas Lemon was convicted of five counts of aggravated criminal sexual assault, one count of aggravated kidnaping, and one count of criminal sexual assault with force, which merged with one of the aggravated criminal sexual assault counts. He was sentenced to an aggregate term of 40 years' imprisonment. On appeal, defendant

contends that the State did not prove the essential elements of the crimes beyond a reasonable doubt.

¶ 3 D.J., the victim, testified during defendant's bench trial that on November 14, 2005, after her friend Shirley Pearson called defendant, he picked them up at about 7:30 p.m. from D.J.'s mother's house. This was D.J.'s first time meeting defendant. Defendant, D.J., Pearson and others ended up "partying" in the alley behind defendant's home. All of them drank alcohol, but Pearson also smoked marijuana. D.J. had one to one and a half cups of alcohol over the course of the night, but observed that defendant's speech became slurred and she could smell alcohol on him.

¶ 4 D.J. and defendant left the alley for 20 to 30 minutes to go to the liquor store at approximately 11:30 p.m., leaving the others behind. They returned to the alley but the others were no longer there. D.J. called Pearson from defendant's cellular phone at approximately 1:10 a.m. Defendant then told D.J. that his mother was sick and he had to get something from inside his house and he did not want to leave her alone in the alley. To get into defendant's house, defendant opened a gate that had what D.J. described as barbed wire at the top. Photos of the fence revealed that it actually had chain-link protruding from the top, and not barbed wire. The window in defendant's home was completely covered so that D.J. could not see outside.

¶ 5 Prior to entering defendant's house, he had not made any advances towards her and had not been aggressive. However, when D.J. entered defendant's home, his attitude changed. He became angry and aggressive, and pushed her backward onto the bed. When D.J. tried to get up, defendant drew his fist approximately 14 inches from her face, and said aggressively, "bitch, don't move." D.J. became scared and told defendant to stop and to let her out. Defendant did not allow D.J. to move away from him. She told defendant she was 16 years old. D.J. testified that defendant ripped her shirt and that she also removed some of her clothing because she was afraid.

The parties stipulated that a red shirt belonging to D.J. was recovered at defendant's home and it was not ripped.

¶ 6 Defendant performed oral sex on D.J., placing his mouth to her vagina as he held her down. D.J. explained that defendant was on his knees on the floor when he performed oral sex on her while holding her down and smoking a cigarette, and that he burned her with his cigarette. Defendant then had intercourse with D.J. by placing his penis in her vagina. He turned D.J. over on her side so that she was facing the wall. Defendant applied some type of lotion or oil substance on D.J.'s buttocks and spanked her bottom repeatedly. She heard clicking sounds and when she turned to see what the sound was, defendant pushed her. As D.J. was facing the wall, defendant threw a knife that flew past her and hit the wall. Defendant also made D.J. dance nude and perform oral sex on him, during which she placed her mouth to his penis. Defendant then placed his mouth to her vagina again as he held her so she was unable to move. Defendant had sexual intercourse with D.J. a second time. He ejaculated and fell asleep on top of D.J. Throughout the sexual acts, D.J. cried and begged him to stop. She also tried to push him off of her but was unsuccessful. Defendant cursed and yelled at D.J. very aggressively. While defendant was asleep, D.J. moved from under him, and grabbed the knife and defendant's cell phone. D.J. was unable to testify as to how long the sexual acts lasted or how long she waited for defendant to remain asleep.

¶ 7 D.J. first called her boyfriend, Willie Dennis, with defendant's cell phone. She was shaking, crying, and scared when she called Dennis. After telling him what happened with defendant, D.J. found some of her clothes and tried to leave. She called the police but could not provide her location. D.J. told the 911 operator that she was raped and she pleaded for help. The transcript of the emergency call was admitted into evidence, and in it D.J. told the operator that she was in a basement and did not know where she was located. She was also afraid that

defendant would wake up, and if he did, she told the operator that she would use the knife against him. She eventually found the latch that locked the door and left by climbing the barbed wire fence that enclosed defendant's home. The police found D.J. as she was running out of the alley. She led the police back to defendant's home where he was sleeping nude and identified him as her attacker. The police then took D.J. to West Suburban Hospital where a sexual assault kit was performed on her. She was given medications that caused her to be ill and to vomit.

¶ 8 On cross examination, D.J. testified that she did not "party" with defendant while inside his home. She denied telling Detective Fanning that only she took her clothes off and that defendant had intercourse with her from the rear. She also testified that she did in fact tell defendant that she was 16 years old. She also testified that she told the officers about the clicking sound, and that defendant performed oral sex on her twice. She did not receive treatment for a cigarette burn and no photographs were taken. On cross examination, defense counsel also impeached D.J. with a telephone conversation she had with her mother when D.J. called her mother's house after returning to the alley to find that Pearson had left. D.J. told her mother that she was on her way to her grandmother's house and that she was with Pearson, which was not the truth.

¶ 9 Pearson testified that she did not observe any flirting, physical contact, or sexual advances between D.J. and defendant. After D.J. and defendant left for the liquor store at about 11:30 p.m., she ended up at D.J.'s mother's house at about 12:45 a.m. Pearson spoke to D.J. sometime after 1 a.m. D.J. did not sound upset, worried, or concerned about her safety.

¶ 10 Willie Dennis, D.J.'s boyfriend, testified to receiving a telephone call from D.J. close to 6 a.m. on November 15, 2011. D.J. was whispering and sounded shaken. D.J. told him that "some guy kidnapped and raped" her and she did not know where she was.

¶ 11 Sergeant Rentner testified that after receiving a dispatch of a kidnaping he set out to locate D.J. He eventually observed her running out of the alley near defendant's home, towards his vehicle. She was carrying a large knife and a cell phone. D.J. was frantic, panicked, and had tears in her eyes. After taking the knife from D.J., Rentner asked her to show him where she ran from and D.J. showed him and other officers defendant's location. The gate was ajar "a very little bit," and they opened the gate to access defendant's house. The officers went inside and D.J. identified the defendant as he lay nude and asleep on his bed. The police arrested defendant. Rentner observed that the walls, window, and door were covered, and the room was very dark.

¶ 12 Dr. Steven Ross was the emergency room physician who treated D.J. at 8:45 a.m. on November 15, 2005. D.J. told Dr. Ross that the assault occurred three hours before Dr. Ross evaluated her. D.J. reported vaginal and oral penetration, and that a knife was used during the assault. His physical examination did not reveal any evidence of injury or violence, and there were no obvious areas of bleeding, laceration, bruising, or swelling. He did not observe any indication of intoxication. Dr. Ross also administered various antibiotics to D.J., which had side effects of nausea and vomiting. On cross examination, Dr. Ross testified that according to his records, D.J.'s mood appeared normal. He completed his examination at 10:30 a.m.

¶ 13 Sara Conroy Applehoff, D.J.'s treating emergency room nurse, also testified that D.J. did not appear to be under the influence of alcohol or drugs. It did not appear to Applehoff that D.J.'s perception and ability to relate what happened was affected by consumption of alcohol or drugs. D.J. told Applehoff that the sexual assault occurred about three to four hours before she arrived at the hospital. Applehoff also testified that she recorded the following quotes from D.J. in her records, "He forced himself into me and threw a knife against the wall." "I tried to make him use a condom, but he wouldn't." "He made me dance for him and kept spanking my butt." Applehoff further testified that D.J. told her that defendant forced her to perform oral sex on him,

that defendant performed oral sex on D.J., defendant penetrated her vaginally, and rubbed Vaseline on her buttocks. D.J. was unsure whether defendant ejaculated, but she knew he did not wear a condom. The parties stipulated to a DNA analysis which matched, within a reasonable degree of scientific certainty, vaginal swabs taken from D.J. to defendant's DNA profile.

¶ 14 The State called Detective Jose Cardo who testified that he initially tried to interview D.J. at about 8:30 a.m. at the hospital, but could not because it appeared as though she was going to vomit. Cardo next interviewed D.J. at the station at approximately 11:45 a.m. when she arrived with her mother. At this time, she appeared calm and was able to articulate herself. The defense then called Cardo as a witness, and Cardo testified that D.J. never told him that she heard a clicking noise behind her and he did not recall whether she ever told him that she told defendant she was 16 years old.

¶ 15 The defense called Detective Tracy Fanning who testified that when he interviewed D.J. at about 7:15 a.m., D.J. appeared inebriated. Fanning also testified that D.J. said she ended up drinking with defendant at his home. She did not say her panties were ripped during the struggle. Fanning did not recall D.J. saying she told defendant she was 16 years old. On cross examination, Fanning testified that he interviewed D.J. for two to three minutes and his focus during the interview was to determine the evidentiary value of the items at the scene, and not to obtain all of the details. He also testified that he did not detect the odor of alcohol and that D.J.'s speech was not slurred. She was not vomiting and he did not request a toxicology screen. D.J. also told Fanning that defendant forced her to remove her clothing and she removed them.

¶ 16 Defendant's brother, Calvin Lemon, testified that he observed D.J. in the front passenger seat of defendant's car at the liquor store. He saw other people in the back seat. Calvin also went to defendant's home at about 11:30 p.m., and while there, a slim female he identified as D.J. came to the door, and peeked through the curtains. She was laughing and appeared joyful and

intoxicated. Defendant's best friend, Marchella Winters, testified that she encountered D.J. and defendant in the alley by defendant's car, near his garage. D.J. told Winters that she was 18 years old.

¶ 17 During closing argument, defense counsel conceded that there was no question whether sex occurred between D.J. and defendant, that clearly the two had sex. However, defense counsel argued that the sex was consensual.

¶ 18 The trial court found D.J.'s testimony to be credible and found that D.J. was not intoxicated, as "sworn out" by the medical reports and testimony. The trial court did not find Winters' testimony to be credible. Defendant was found guilty of five counts of aggravated criminal sexual assault, one count of aggravated kidnaping, and one count of criminal sexual assault with force, which merged with one of the aggravated criminal sexual assault counts. The trial court sentenced defendant to eight years on each count. One of the aggravated criminal sexual assault sentences ran concurrent with the aggravated kidnaping sentence for an aggregate sentence of 40 years' imprisonment. On appeal, defendant contends that the State did not prove the essential elements of the crimes beyond a reasonable doubt.

¶ 19 In reviewing a challenge to the sufficiency of evidence, a reviewing court considers whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 47 (2011). We will reverse a conviction where the evidence is "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt." *People v. Herman*, 407 Ill. App. 3d 688, 704 (2011). The elements of criminal sexual assault are set forth in section 12-13 of the Criminal Code of 1961 (720 ILCS 5/12-13(a)(1) (West 2004)), which provides that the accused commits criminal sexual assault if he commits an act of sexual penetration by the use of force or threat of force. A defendant commits aggravated

criminal sexual assault if, during the commission of a criminal sexual assault, he displays, threatens to use, or uses a dangerous weapon, other than a firearm. 720 ILCS 5/12-14(a)(1) (West 2004). Aggravated kidnaping is committed if a defendant knowingly and secretly confines another against her will and commits another felony upon her. 720 ILCS 5/10-1 and 5/2(a)(3) (West 2004).

¶ 20 D.J.'s trial testimony, if accepted as credible, supports a guilty finding beyond a reasonable doubt for aggravated criminal sexual assault. D.J. testified that when she entered defendant's home, he became angry and aggressive and pushed her onto the bed. He threateningly drew his fist back when she tried to get up and aggressively said, "bitch, don't move." He did not allow her to move or leave. Defendant also threw a large knife at D.J. which flew past her and hit the wall. Under this use and threat of force, defendant committed multiple acts of sexual penetration, including placing his mouth to her vagina on two separate occasions, and placing his penis in her vagina on two separate occasions. Defendant also made her perform oral sex on him.

¶ 21 Similarly, if credible, D.J.'s testimony establishes the elements of aggravated kidnaping. D.J. testified that defendant lured her into his home under the guise that he had to check on his sick mother and he did not want to leave her alone in the car. He then forced her to stay by raising his fist threateningly, holding her down, and throwing the knife at her. D.J. was only able to leave after defendant passed out. Defendant committed a felony upon her in committing criminal sexual assault.

¶ 22 Defendant argues, however, that D.J. was not credible. This court will not retry a defendant when considering a challenge to the sufficiency of the evidence, and we will bear in mind that the trier of fact is in the best position to judge the credibility of witnesses. *Jonathon C.B.*, 2011 IL 107750, ¶59. We will give due consideration to the fact finder's observing and

hearing witnesses. *Id.* Further, a trier of fact is not obligated to search out all possible explanations consistent with innocence. *Id.* at ¶60. The trier of fact "need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances," rather, it is sufficient "if all the evidence taken together satisfies the trier of fact beyond a reasonable doubt." *Id.*

¶ 23 In this case, the trial court considered the parties' presentation of evidence. D.J.'s account of the sexual assault and kidnaping was consistently reported. She told her boyfriend Willie Dennis, the 911 operator, and police officers that defendant kidnaped and raped her. D.J. also told Dr. Ross and Nurse Applehoff that defendant penetrated her vaginally and orally and that a knife was used during the attack. Further, Nurse Applehoff quoted D.J. in her records as stating that defendant "forced himself into [her] and threw a knife against the wall." D.J.'s testimony was not "fraught with inconsistencies and contradictions." *Cf. People v. Schott*, 145 Ill.2d 188, 207 (1991) (complaining witness testified that she "lies a lot," and she was impeached numerous times, including telling police officers and DCFS workers that she accused defendant of a criminal sexual offense because she was angry with him, and recanting her story several times).

¶ 24 Defendant argues that the State failed to prove him guilty beyond a reasonable doubt and in doing so places great emphasis on his argument that D.J.'s timeline does not match up with cell phone records. In particular, defendant argues that according to D.J.'s testimony, she arrived at defendant's house at approximately 11:50 p.m., that her last phone call to her mother's house was at 1:12 a.m., and that the sexual assault began as soon as she entered defendant's house, which was shortly after calling her mother's house. She called her boyfriend at 5:44 a.m., and 911 at 5:50 a.m. Defendant states that D.J. did not describe a sexual assault that lasted more than four hours. Yet, D.J. testified that she did not know how long the acts of sexual assault lasted, nor how long defendant was in a "deep sleep" before she attempted her escape. Further, D.J.'s

account of the events of that night and early morning were also corroborated by her statements to Dennis, the 911 operator, medical personnel, and police officers. Additionally, although there was a gap in time between D.J. leaving for the liquor store and calling 911 to report the assault, this does not make her testimony incredible. The time that D.J. left for the liquor store is an event collateral to the criminal sexual assault, and this event does not negate D.J.'s consistent testimony regarding the attack. See, *e.g.*, *In re Jonathon C.B.*, 2011 IL 107750, ¶ 62 (although the victim's testimony presented a gap in her timeline with regard to when she left her friend's house, immediately prior to the attack, her testimony was consistent concerning the sexual assault).

¶ 25 Defendant also argues that D.J. embellished her testimony when she said she climbed over a barbed wire fence. Photos of the fence revealed that the fence actually had chain-link protruding from the top, and not barbed wire. Defendant argues further embellishment when D.J. testified that she had to climb over a car to climb the fence, but Officer Rentner testified to walking through a gate that was ajar "a very little bit." He asserts she embellished her testimony when she told the 911 operator that she was in a basement and could not find a way out. Trial testimony from D.J. and Rentner revealed that defendant's home actually resembled a garage and a tool shed in which the walls, window, and door were covered and the home was very dark. Rentner and the 911 transcript also revealed that D.J. was afraid and panicked as she tried to escape. Defendant also argues that D.J. embellished her story when she stated she was burned with a cigarette, when medical evidence did not document a burn. Additionally, D.J. testified that defendant ripped her shirt, yet the parties stipulated that the red shirt recovered from the scene belonging to D.J. was not ripped.

¶ 26 Defendant further contends that D.J.'s testimony was impeached by detectives Cardo and Fanning. He argues that D.J. told Fanning that she was drinking alcohol alone with defendant at

his house and that she was impeached when she testified to calling and telling her mother that she was with Pearson and on her way to her grandmother's house, when she in fact was with defendant in the alley.

¶ 27 For purposes of our review, "it is not dispositive if [the victim's] testimony was impeached or inconsistent because 'it is for the trier of fact to resolve conflicts or inconsistencies in the evidence.'" *People v. Sanders*, 2012 IL App (1st) 102040, ¶ 15 (2012), quoting, *Jonathon C.B.*, 2011 IL 107750, ¶ 59. The trial court found that D.J. was not intoxicated and found her to be a credible witness. Thus, these inconsistencies do not make the evidence "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt." *Herman*, 407 Ill. App. 3d at 704.

¶ 28 Further, defendant relies on *People v. Herman*, 407 Ill. App. 3d 688 (2011), in support of his proposition that this case hinged on D.J.'s testimony and she was not a credible witness. However, *Herman* is distinguishable. In that case, the complaining witness, a self-described crack cocaine addict, testified that the defendant sexually assaulted her sometime after 5:25 a.m. in her bedroom. *Id.* 689. She also testified that the defendant, a police officer, picked her up in his caged squad car, and that the defendant had a gun in an ankle holster. *Id.* at 707. The defendant's squad car was not caged and no holster was ever recovered. *Id.* The complaining witness was impeached by several witnesses who testified that she reported that the sexual assault occurred at various conflicting times. *Id.* at 705. The defendant in *Herman* also argued that there was consensual sex the evening before the alleged assault, prior to the start of his shift. *Herman*, 407 Ill. App. 3d at 699. These inconsistencies were significant particularly because the defendant had an alibi for his whereabouts during the time the sexual assault allegedly occurred. *Id.* at 706. After considering the whole record, and viewing the record in the light most favorable to the State, this court concluded that the flaws in the complaining witness' testimony "made it

impossible for any fact finder reasonably to accept any part of it." *Id.* at 707. This is not true for D.J.'s testimony. Her account of the assault was consistently reported to medical personnel, the 911 operator, and to detectives. All of the evidence, taken together, supports defendant's guilty findings beyond a reasonable doubt.

¶ 29 In light of D.J.'s consistent testimony and outcry statements regarding the acts of criminal sexual assault and aggravated kidnaping perpetrated against her, we cannot conclude that no rational trier of fact would have found defendant guilty of these crimes beyond a reasonable doubt. Therefore, we reject defendant's contention that the State failed to prove him guilty beyond a reasonable doubt.

¶ 30 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 31 Affirmed.