

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09 CR 14248
)	
SAM SHIPP,)	Honorable
)	Stanley Sacks,
Defendant-Appellant.)	Judge Presiding.

JUSTICE KARNEZIS delivered the judgment of the court.
Justices Cunningham and Rochford concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to convict defendant of aggravated criminal sexual abuse where the complainant testified credibly; the trial court conducted an adequate inquiry into defendant's *pro se* allegations of ineffective assistance of trial counsel.

¶ 2 Following a bench trial, defendant Sam Shipp was convicted of three counts of aggravated criminal sexual abuse and sentenced to 30 months' probation. On appeal, defendant contests the sufficiency of the evidence supporting his conviction, arguing that the complainant's testimony was inconsistent, unreasonable, and contrary to human experience. He also contends

that the trial court erred in failing to adequately inquire into all of his allegations of ineffective assistance of counsel. We affirm.

¶ 3 The evidence revealed that in May 2009, P.R., who was under the age of 13 at the time of the incident in question, was living with her great-grandmother (Betty Pickett) and her grandmother (Patricia Johnson) at 211 North Kolin Avenue. At that time, P.R.'s mother (Betty Johnson) lived in a separate apartment.

¶ 4 At trial, P.R. testified that on Sunday, May 24, 2009, she and Patricia Johnson were at Betty Johnson's apartment. Patricia Johnson asked P.R. if she wanted to go to her godmother's house to clean and make some money. P.R. responded positively and defendant, who was Patricia Johnson's boyfriend and a friend of the family, picked up P.R. and Patricia Johnson at about 3 p.m. while it was light outside. Defendant drove P.R., who was in the backseat, and Patricia Johnson, who was in the front seat, to a park. Defendant parked and Patricia Johnson exited the car and was gone for about three minutes. Defendant asked P.R. if she wanted to kiss him, and P.R. repeatedly said "no" and shook her head. When Patricia Johnson returned to the car, they drove away and parked at a location near a restaurant, a "campus," and a building that had a camera. P.R. indicated that there were people walking around the area, but not where they were parked.

¶ 5 Defendant again asked P.R. if she wanted to kiss him, and P.R. responded negatively. Defendant told P.R. that she should not be shy around her grandmother because Patricia Johnson did not have to see. Defendant then got out of the car, pulled out a black mat from the trunk, and attached it to the ceiling of the inside of the car. Defendant entered the backseat with P.R. while Patricia Johnson was in the front passenger seat. The mat blocked P.R.'s view of the front seat where Patricia Johnson was seated, but the windows were exposed. Patricia Johnson giggled and said, "y'all got a few minutes back there." Defendant kissed P.R., who tightly closed her lips, and

then he touched her breasts, vagina, and buttocks. After touching P.R., defendant asked her to grab his penis. When P.R. did not respond, defendant grabbed her hand, placed it on his penis over his clothes, and told her to squeeze, which she did.

¶ 6 While the incident occurred, there were no people outside of the car. After Patricia Johnson told defendant that they had a few minutes left, defendant put the mat in his trunk and drove away with Patricia Johnson and P.R. Defendant dropped them off near their residence and gave P.R. \$5 and Patricia Johnson \$10. P.R. indicated that defendant gave Patricia Johnson money in the past, which she spent on drugs and liquor. Before leaving, defendant instructed Patricia Johnson to make sure P.R. did not tell anyone about the incident, and Patricia Johnson responded that P.R. would not say anything because she knew better.

¶ 7 Later, P.R.'s mother, Betty Johnson, questioned P.R. regarding the money she obtained. P.R. related to her mother what had happened when she was in the car with defendant, and Betty Johnson called the police. After speaking with police, P.R. went to the hospital where she was examined by medical personnel. P.R. also told the medical personnel everything she remembered regarding the incident.

¶ 8 Betty Johnson testified that P.R. told her how she obtained the \$5. Betty Johnson's testimony detailing what P.R. told her regarding the incident was consistent with P.R.'s testimony.

¶ 9 The parties stipulated that Joy Soriano, an emergency room nurse, would testify that she treated P.R. who told her that she was in a car with her grandmother and her grandmother's boyfriend. P.R.'s grandmother's boyfriend fondled P.R.'s private area with his fingers and he also had her touch his private parts. P.R. further told Soriano that she was given money and told not to tell her mother about the fondling.

¶ 10 Patricia Johnson, who had two previous convictions for possession of a controlled substance, testified on behalf of defendant that she knew him for 22 years, and that he was her boyfriend at one time. Patricia Johnson was with defendant and P.R. on Friday, May 22, not Sunday, May 24. On May 22, after drinking beer with defendant, defendant drove her and P.R. to a store. While defendant and P.R. remained in the car, Patricia Johnson bought beer at the store and returned to the car within a few minutes. Defendant then drove them to a nearby restaurant where they waited 10 to 15 minutes for Patricia Johnson's friend to bring her drugs. When that person did not arrive, defendant drove Patricia Johnson and P.R. back to the store, defendant gave Patricia Johnson \$10 and P.R. \$5, and then Patricia Johnson and P.R. returned home. According to Patricia Johnson, at no time did defendant get into the backseat with P.R. or hang a drape between the front and backseat.

¶ 11 Defendant testified that he was 73 years old and knew P.R. was 10 years old. Regarding the events in question, defendant testified similarly to Patricia Johnson. He also testified that he never got into the backseat with P.R. or touched her.

¶ 12 The parties then stipulated that Raziya Lumpkins would testify that she was employed as a forensic interviewer for the Chicago Advocacy Center and that on July 7, 2009, she interviewed P.R. Lumpkins' report indicated that P.R. told her that the incident happened on a Thursday, and it was Friday when she told her mother and made a police report. The parties also stipulated that Rachon Stovall, a case worker for the Illinois Department of Children and Family Services would testify that he met with P.R. and that his report states that P.R. told him the incident happened on a school day, but she did not go to school because she did not have any clean clothes.

¶ 13 Following closing arguments, the trial court found defendant guilty of three counts of aggravated criminal sexual abuse. In doing so, the court found that P.R.'s testimony was credible and consistent, except for her testimony regarding the date the incident occurred, which the court

indicated was "not much of an issue." The court further stated that the testimony of Patricia Johnson and defendant was not credible.

¶ 14 Prior to sentencing, the trial court noted that defendant sent him a letter indicating that he "did not get proper legal representation." After defendant told the trial court that his attorney failed to "cross-examine the State witness," the following colloquy occurred between defendant and the court:

DEFENDANT: [Counsel] did not -- I'm a 72-year-old man. Certain medical conditions that they did not contest, something that I did 72-years old is medically impossible.

THE COURT: I'm listening. Go ahead, [defendant]. We're not talking about your defense in this case. I already heard your testimony, I already heard the State's witnesses. In my opinion the State has proven you guilty of the charges against you. We're not talking about the facts again. We're talking about you[r] claim your lawyer was ineffective in some way or another. In what way or another you're claiming is ineffective about him?

DEFENDANT: I'm not a lawyer, this is what I'm saying. I felt that -- I know I am innocent and I felt that if he had been more aggressive asking questions I would have been found not guilty.***

THE COURT: Anything else you want to add at all about your lawyer, about ineffectiveness at all, [defendant]?

DEFENDANT: All I can say is I've known that family. He did not cross-examine the mother. The mother sat on the stand and

told different cases like how long been knowing me, he didn't cross-examine her. I mean, she stated that I paid for her 8th-grade graduation 9 years ago; in fact, it was 15 years ago, things like that. *** I couldn't have known her only 9 years and when I paid for her 8th-grade graduation some 15 years ago and I've been knowing her 21 years ago, things like that. That's why I hired an attorney.

THE COURT: That's why you're not an attorney because your lawyer is. Anything else you want to add, [defendant]?

DEFENDANT: No.

THE COURT: I don't think based on what everyone has told me it is necessary for another lawyer to represent [defendant] on the motion for a new trial. Just talking about basically your strategy, what questions to ask, how to ask them, who to ask them to, whether or not you knew the person for 15 years or 10 years, gone to school with a person and paid for their school years back is really a side issue in this case. It's not anything crucial as far as what occurred on the date that the evidence showed things did occur, so no need to do anything further with the issue about ineffective based on Krankel, no relief for you to get another lawyer at this point."

The court then sentenced defendant to 30 months' probation.

¶ 15 On appeal, defendant first challenges the sufficiency of the evidence to sustain his conviction for aggravated criminal sexual abuse. Specifically, defendant maintains that P.R.'s

testimony of the alleged incident was unreasonable, inconsistent, and contrary to human experience as compared to his reliable, consistent, and corroborated testimony.

¶ 16 In reviewing a sufficiency of the evidence claim, the relevant inquiry is whether, after viewing the evidence in a light most favorable to the State, any rational trier of fact could have found the defendant guilty of the essential elements of the crime beyond a reasonable doubt. *People v. Davison*, 233 Ill. 2d 30, 43 (2009). A reviewing court will not retry the defendant. *People v. Cox*, 195 Ill. 2d 378, 387 (2001). Rather, it is the responsibility of the trier of fact to assess witness credibility, weigh the evidence and draw reasonable inferences therefrom, and resolve any conflicts in the testimony. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A defendant's criminal conviction will not be reversed on appeal unless the reviewing court finds that "the evidence is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt." *People v. Brown*, 185 Ill. 2d 229, 247 (1998).

¶ 17 As charged in this case, a defendant commits aggravated criminal sexual abuse if he was 17 years of age or over and commits an act of sexual conduct with a victim who was under 13 years of age when the act was committed. 720 ILCS 5/12-16(c)(1)(i) (West 2008). Section 12-12(e) of the Criminal Code of 1961 (Code) defines "sexual conduct" as any intentional touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus or breast of the victim or the accused, or any part of the body of a child under 13 years of age for purpose of sexual gratification or arousal of the victim or the accused. 720 ILCS 5/12-12(e) (West 2008).

¶ 18 Viewed in the light most favorable to the State, the evidence in this case sufficiently established that defendant committed aggravated criminal sexual abuse. P.R. and Patricia Johnson testified that defendant picked them up and drove them around the neighborhood. Patricia Johnson admitted that she was attempting to buy drugs. P.R. testified that after telling

defendant that she did not want to kiss him, defendant got into the backseat with her while Patricia Johnson was still in the front seat. Defendant attached a black mat to the ceiling of the inside of the car, which blocked P.R.'s view of the front seat. Defendant kissed P.R., who tightly closed her lips, and then he touched her breasts, vagina, and buttocks. After touching P.R., defendant grabbed P.R.'s hand and placed it on his penis over his clothes. Later, P.R. told her mother and Joy Soriano, an emergency room nurse, about the incident. The testimony of P.R.'s mother and Soriano detailing what P.R. told them was consistent with P.R.'s testimony.

¶ 19 Nevertheless, defendant argues on appeal that P.R.'s version of what occurred was unreasonable, while his testimony was credible. Defendant specifically maintains that P.R.'s story is contrary to human experience because she claims to have been assaulted in her grandmother's presence in broad daylight, the alleged incident occurred in front of a building with a security camera that was adjacent to a populated restaurant and a "campus," and there were people walking around that could have looked into the car's windows. Defendant further points out that P.R.'s credibility was undermined by the inconsistencies in her reporting of the date of the alleged incident.

¶ 20 Despite defendant's arguments to the contrary, P.R.'s credibility was an issue for the trier of fact (*Campbell*, 146 Ill. 2d at 375), and we will not substitute our judgment for that of the trier of fact, particularly where P.R.'s testimony was not so improbable as to create a reasonable doubt of defendant's guilt (*Brown*, 185 Ill. 2d at 247). In so finding, we note that the evidence showed that P.R.'s grandmother, Patricia Johnson, admitted to trying to buy drugs while P.R. was in the car, P.R. testified that while the incident occurred, there were not any people outside of the car, and the trial court held that P.R.'s inconsistent testimony regarding the day in which the incident occurred was "not much of an issue."

¶ 21 Defendant next contends that the court failed to conduct a sufficient inquiry into his *pro se* allegations of ineffective assistance of counsel. He specifically maintains that although the court addressed some of his claims, it failed to address his allegation that trial counsel failed to introduce evidence regarding his medical condition. Defendant thus requests a remand for that purpose pursuant to *People v. Krankel*, 102 Ill. 2d 181 (1984).

¶ 22 In *Krankel*, 102 Ill. 2d at 187-89, the supreme court remanded the cause for a hearing on the defendant's *pro se* posttrial motion alleging ineffective assistance because the trial court failed to appoint new counsel to represent the defendant on the motion. Following *Krankel*, the supreme court held that the appointment of new counsel is not automatically required when defendant presents such a motion; but rather, the trial court must first conduct an inquiry into the factual basis for defendant's claim. *People v. Moore*, 207 Ill. 2d 68, 77-78 (2003).

¶ 23 The operative concern for the reviewing court is whether the trial court conducted an adequate inquiry into defendant's *pro se* allegations. *Moore*, 207 Ill. 2d at 78. To accomplish this, the trial court may converse with counsel regarding the facts surrounding the allegations or hold a brief discussion with the defendant. *People v. Milton*, 354 Ill. App. 3d 283, 292 (2004). The trial court may also evaluate the defendant's claims based on its knowledge of counsel's performance at trial or the insufficiency of the defendant's allegations on their face. *Milton*, 354 Ill. App. 3d at 292. In addition, where the trial court's probe reveals that the defendant's claims are "'conclusory, misleading, or legally immaterial' or do 'not bring to the trial court's attention a colorable claim of ineffective assistance of counsel,' the trial court may be excused from further inquiry." *People v. Burks*, 343 Ill. App. 3d 765, 774 (2003), quoting *People v. Johnson*, 159 Ill. 2d 97, 126 (1994).

¶ 24 Here, defendant sent the court a letter indicating that he received ineffective assistance of counsel. Prior to sentencing, the court inquired into defendant's allegations. Defendant

specifically told the court that, "[Counsel] did not -- I'm a 72-year-old man. Certain medical conditions that they did not contest, something that I did 72-years old is medically impossible." In response the court told defendant that it was not time to discuss the facts, and that defendant needed to describe how his counsel was ineffective. Defendant then told the court that counsel was not aggressive enough in his questioning, and failed to properly cross-examine the State's witnesses. The court rejected defendant's arguments and concluded that it was unnecessary for another lawyer to represent him on his posttrial motion of ineffective assistance of counsel because nothing defendant alleged was crucial to the case.

¶ 25 Despite defendant's contentions to the contrary, the record shows that the court conducted an adequate inquiry into all of his allegations, including his statements about his medical condition. The court indicated that defendant's remarks regarding his medical condition related to the facts of the case and did not amount to an ineffective assistance of counsel claim. Moreover, the trial court found that defendant's collective arguments were "side issues" and not crucial to the case. See *Burks*, 343 Ill. App. 3d at 774 (stating that the trial court may be excused from further inquiry where the defendant's claims are legally immaterial or do not bring to the court's attention a colorable claim of ineffective assistance of counsel).

¶ 26 In reaching this conclusion, we find *People v. Peacock*, 359 Ill. App. 3d 326 (2005), relied on by defendant, distinguishable from the case at bar. In *Peacock*, prior to sentencing, the defendant wrote the court a letter alleging that his defense counsel did not represent him to the fullest of his ability. The trial court ignored the letter and proceeded to sentencing. On appeal, we held that the trial court conducted no inquiry of any sort into defendant's allegations. *Peacock*, 359 Ill. App. 3d at 339. We thus remanded the cause for the purpose of allowing the trial court to conduct the preliminary investigation required by *Krankel*. *Peacock*, 359 Ill. App.

1-11-0744

3d at 341. Here, however, the court did not ignore defendant's letter. In fact, the court made a very detailed inquiry into defendant's allegations of ineffective assistance of counsel.

¶ 27 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 28 Affirmed.