

2012 IL App (2d) 101186-U
No. 2-10-1186
Order filed February 17, 2012

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Kane County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 09-CF-2225
)	
JUSTIN GONZALEZ,)	Honorable
)	Thomas E. Mueller,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

Held: The State proved defendant guilty beyond a reasonable doubt of criminal sexual assault: although the victim's testimony was inconsistent in some minor respects, the trial court was free to credit her testimony as to the crucial facts, that defendant held her down and had sex with her despite her attempts to resist.

¶ 1 Following a bench trial, defendant, Justin Gonzalez, was found guilty of criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2010)), and he was sentenced to nine years' imprisonment. On appeal, he argues that he was not proved guilty beyond a reasonable doubt. More specifically,

he claims that the testimony of M.A., the victim, was incredible and, alternatively, that the State failed to prove that he used force when he penetrated M.A. We affirm.

¶ 2 The evidence presented at trial revealed that on February 13, 2009, M.A., who was 16 at the time and spoke primarily Spanish, and her friend, D.L., skipped high school to go to a party. At the party, M.A. consumed three shots of tequila in 30 minutes and was overcome by the smoke from marijuana cigarettes that other partygoers were smoking. Because she began feeling dizzy from the tequila and smoke, she sat down.

¶ 3 Soon thereafter, defendant, an 18-year-old whom M.A. described as chubby and bigger than her, pulled M.A. up; escorted her to a bedroom; pushed her down on a bed; took off her shoes, pants, and underwear while he held her down with one hand; momentarily let go of M.A. while he pulled down his own pants and underwear; and then inserted his penis into M.A.'s vagina. While the assault was taking place, M.A. claimed that she yelled at defendant in English to stop and to leave her alone, kicked at him, and attempted to push him.

¶ 4 When the assault was over, M.A. went to look for D.L. M.A. first indicated that she found D.L. in another bedroom in the house and that D.L. was screaming. Later, M.A. stated that she found D.L. sitting in a bathtub and that D.L. was not screaming.

¶ 5 When the police arrived, M.A. initially denied that the assault took place. M.A. explained that she was not forthcoming because she was afraid. However, M.A. later told the authorities about the assault; submitted to the collection of DNA evidence and an examination, which revealed no signs of trauma; and, several months later, identified defendant as the man who assaulted her.

¶ 6 Defendant, who is a convicted felon, willingly spoke with the police, initially denying that he had sexual contact with M.A. After forensic tests indicated that defendant had sex with M.A.,

defendant admitted that he had sex with her. However, he told the police that the sex was consensual; M.A. protested only when she discovered that defendant did not have protection; and, once M.A. objected to having sex with defendant, he stopped.

¶ 7 The court found defendant guilty. In doing so, the court found it “certainly troubling” that defendant admitted to having sex with M.A. only after forensic tests confirmed as much. Although the court noted that M.A.’s testimony was not consistent with all of the statements she gave the authorities, the court found that, given M.A.’s youth, that was not surprising. Moreover, although the court found that the fact that M.A. was not sober when the assault occurred further “muddi[ed] the water,” the court found that her testimony was not so incredible as to create a reasonable doubt of defendant’s guilt.

¶ 8 Subsequently, the court sentenced defendant, defendant moved to reconsider, and the court denied the motion. This timely appeal followed.

¶ 9 On appeal, defendant argues that he was not proved guilty beyond a reasonable doubt. In reviewing a challenge to the sufficiency of the evidence, “ ‘the relevant question is whether, after 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.’ ” (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact is responsible for resolving conflicts in the testimony, weighing the evidence, and determining what inferences to draw, and a reviewing court ordinarily will not substitute its judgment on these matters for that of the trier of fact. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000).

¶ 10 Defendant first claims that he was not proved guilty beyond a reasonable doubt because M.A.'s testimony was inconsistent with other evidence. Although credibility determinations are not immune from review, they generally will not be disturbed on appeal unless no rational trier of fact could have given credence to the challenged testimony. In *People v. Schott*, 145 Ill. 2d 188, 206-07 (1991), for example, our supreme court held that the complaining witness's testimony was too "fraught with inconsistencies and contradictions" to sustain her stepfather's conviction of indecent liberties with a child where she had previously falsely accused a family member of sexual abuse; she admitted that she lied frequently; she had told several police officers and a child welfare specialist that she had fabricated the allegations against her stepfather; and she had given inconsistent testimony in a related juvenile court proceeding about where and when the offense took place, how often the defendant had molested her, and other incidental matters. See also *People v. Smith*, 185 Ill. 2d 532, 542-45 (1999) (rejecting testimony of witness who identified gunman in fatal shooting where the witness came forward days after the incident; she had a motive to testify falsely to protect her sister and her sister's boyfriend, who were suspected of involvement in the shooting; she was impeached with prior inconsistent statements regarding the extent of her drug habit and whether she planned to use drugs with her sister on the evening of the shooting; and her account of the shooting was materially different from accounts given by the State's other occurrence witnesses).

¶ 11 Here, defendant argues that M.A.'s testimony should have been discredited because "[her] account of how the sexual penetration occurred was implausible," she did not identify defendant as the perpetrator when the police first questioned her, testimony indicated that others at the party were more intoxicated than she was, and she gave different accounts of where D.L. was after the assault occurred and whether D.L. was screaming. To the extent that there were inconsistencies on these

points, and we note that the record rebuts some of these claims, M.A.'s testimony as a whole on these matters was not so "fraught with inconsistencies and contradictions" that it should have been discredited. *Schott*, 145 Ill. 2d at 206-07.

¶ 12 Specifically, M.A. plausibly indicated that, because she was wearing loose-fitting clothing and was too dizzy to leave the room or fight back effectively, defendant was able to remove her clothes and lower his pants and underwear while holding M.A. down with one hand. Moreover, those facts explain why there were no signs of trauma on M.A.'s body. Because M.A. was intoxicated, defendant did not have to use a great amount of force to restrain M.A. Further, defendant was holding M.A.'s arms down while she was wearing her shirt and, perhaps, her winter coat. Given those facts, the lack of evidence of trauma was understandable. But, importantly, the nurse who examined M.A. explained that the absence of such injuries did not mean that an assault did not take place.

¶ 13 Likewise, the evidence established that, although M.A. initially did not implicate defendant or identify him as her attacker, this was because, as a 16-year old girl who had skipped school and speaks primarily Spanish, she was generally scared or scared that defendant would do something to her. The fact that D.L. claimed to have consumed more alcohol than anyone else at the party and that defendant testified that M.A. did not appear intoxicated to him means little, especially when D.L., who knew M.A., testified that M.A. was "drinking a lot;" defendant, a virtual stranger to M.A., would not know how she would act if intoxicated; and other evidence confirmed that M.A. was intoxicated.

¶ 14 Finally, the fact that M.A. gave conflicting accounts of where D.L. was after the assault and whether D.L. was screaming is inconsequential, as the trial court was charged with evaluating how

these inconsistencies on tangential matters affected the credibility of M.A.'s whole testimony. See *People Cunningham*, 212 Ill. 2d 274, 283 (2004). In conducting this evaluation, the court could properly accept parts of M.A.'s testimony without accepting all of it. See *People v. Hicks*, 133 Ill. App. 2d 424, 437 (1971). Thus, here, although the trial court noted the tangential inconsistencies in M.A.'s testimony, that fact alone did not mandate that M.A.'s testimony be discredited in its entirety.¹

¶ 15 The next issue we address is whether the State established beyond a reasonable doubt that defendant forced M.A. to have sex with him. Defendant claims that the record does not contain evidence showing that M.A. physically and vocally resisted him in a manner that communicated to defendant that she did not want to have sex.

¶ 16 To establish that the sexual intercourse was performed by force, a victim does not have to show physical injury or resistance or an attempt to cry out for help. *People v. Bowen*, 241 Ill. App. 3d 608, 620 (1993). Moreover, in assessing whether a defendant used force in sexually assaulting

¹As an aside, we note that defendant makes much of the fact that, in rendering its decision, the trial court found that defendant admitted that M.A. told defendant to stop but that defendant continued to penetrate her. Although such an admission was made, a fair reading of defendant's entire testimony reveals that what defendant actually meant was that M.A. asked defendant to stop when she learned that defendant did not have protection. And, according to defendant, once M.A. withdrew her consent, defendant stopped. That said, we determine that, even absent the above construction of the evidence, defendant was still proved guilty beyond a reasonable doubt.

the victim, courts have determined that the victim's testimony alone is enough to sustain a conviction. *People v. Carlson*, 278 Ill. App. 3d 515, 521 (1996).

¶ 17 Here, M.A. testified that she did not consent to the intercourse. She stated that, when the assault occurred, she was so dizzy from drinking tequila and inhaling marijuana smoke that she had to sit down. While sitting down, defendant, who was older and bigger than M.A., pulled her by the arms, led her to the bedroom, pushed her down on the bed, and undressed her. While all of this was happening, M.A. told defendant to stop and leave her alone. When defendant lowered his pants and underwear and climbed on top of M.A., she yelled at defendant to stop, kicked at him, and attempted to push him away. In *Bowen*, the victim tried to push the defendant away and continually told him “ ‘no,’ ” “ ‘leave,’ ” and “ ‘stop.’ ” *Bowen*, 241 Ill. App. 3d at 618. The *Bowen* court concluded that “[t]hese facts would present circumstances affording a person of ordinary intelligence a reasonable opportunity to know the victim did not consent to have sexual relations, and he or she was committing sexual penetration by force, as defined by statute.” *Id.* at 618. Such circumstances are also present in this case. Thus, we conclude that the State proved beyond a reasonable doubt that defendant used force upon M.A. when he had sex with her.

¶ 18 Relatedly, although defendant recognizes that corroboration is no longer necessary in a sexual assault case (*Schott*, 145 Ill. 2d at 202), defendant nevertheless argues that, because M.A.'s testimony provided the only evidence indicating that defendant used force in order to have sex with her, defendant should have been found not guilty. Given the fact that M.A.'s testimony was clear on the material facts, we fail to see how the fact that her testimony was not corroborated means anything in assessing whether defendant was proved guilty beyond a reasonable doubt.

¶ 19 Viewing the evidence in a light most favorable to the State, there was clearly evidence to support each element of the charged offense and to permit the judge to find defendant guilty beyond a reasonable doubt.

¶ 20 For these reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 21 Affirmed.