

No. 1-10-2216

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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. 08 CR 15702
)	
SALVADOR BEGAY,)	Honorable
)	John Joseph Hynes,
Defendant-Appellant.)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Justices Howse and Palmer concurred in the judgment.

ORDER

- ¶ 1 *Held:* Defendant's claim that trial court erred in granting the State's motion *in limine* waived for review; evidence sufficient to sustain defendant's conviction of aggravated criminal sexual abuse; judgment affirmed.
- ¶ 2 Following a jury trial, defendant was found guilty of two counts of aggravated criminal sexual abuse, and sentenced to three years' felony probation. On appeal, defendant contends that the trial court erred in granting the State's motion *in limine* to exclude exculpatory and otherwise admissible testimonial evidence which would have resulted in a different jury verdict. He also contends that the evidence was insufficient to prove him guilty of aggravated criminal sexual abuse beyond a reasonable doubt.

¶ 3 Defendant, who was 41 years of age, was charged with aggravated criminal sexual abuse of 15-year-old victim, Maranda R., on July 6, 2008. Prior to trial, the State filed a motion *in limine* to prohibit defendant from eliciting testimony or evidence of Maranda's prior sexual activity or sexual reputation. The State noted that pursuant to section 115-7 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-7 (West 2008)), a victim's prior sexual activity or sexual reputation are inadmissible except where it is alleged that the victim consented to the sexual conduct. Since defendant did not allege that this is a consent case, the State maintained that any testimony regarding Maranda's prior sexual reputation was irrelevant and inadmissible.

¶ 4 At the proceeding on the State's motion *in limine*, the court asked defense counsel if he had any objection to being precluded from eliciting testimony from Maranda regarding her sexual activity or reputation. Counsel indicated that he had no objection, but then noted that:

"[I]t wouldn't be something where I was maligning the [victim] or bringing up her prior reputation, but it may come out during the case or during the defense case that there has been an argument about something that was sexual in nature."

The court asked counsel for an offer of proof, and counsel responded that if the mother of Maranda is called to testify she would testify that she had an argument with Maranda about her improper behavior, which was "flirty or risqué or coming on to and I may call her and I may not." When the court asked for the State's position on this matter, the State responded that such testimony would be hearsay and irrelevant. The court then stated the following:

"[I] think that that falls within the parameters of [section 115-7 of the Code]. Do you have some case law that says it does not? I will take a look at it before we call the witness if you are to call that

witness. If you intend to do that give me the case law and I will take a look at it, all right."

Defense counsel responded, "[v]ery well, Judge," and no further mention of the issue was made at the ensuing trial.

¶ 5 At trial, Maranda testified that her mother was Monica Curtis, and that in November 2007, she moved out of the home of her mother's ex-boyfriend in Elgin, and went to live in Bridgeview with defendant, who was dating her mother. Defendant's home had a swimming pool and three bedrooms, which were occupied by several of defendant's relatives. Maranda shared a room with her sister, Isabella, and defendant's daughter, Elizabeth. She looked up to defendant as a father figure, and enjoyed living at his home because he always had food and also had a pool.

¶ 6 On July 5, 2008, Monica left defendant's home and went to the home of Maranda's grandparents in Elgin. Maranda did not leave with her because her uncle Marco was to pick her up the next day, and she wanted to remain at defendant's house. That night she and her sister Isabella went to a nearby park, then to a couple of friends' houses, and at 2 a.m. Maranda left to return to defendant's home. When she arrived, defendant asked who was there, and she said, "me," then went to her bedroom, and shut the door. She was the only one in the room at that time, and she went to sleep in her shorts and tank top.

¶ 7 At 5 a.m. she awoke to find defendant on her bed. He leaned over and started to kiss her by placing his tongue in her mouth. She tried to push him away and keep her mouth closed, but defendant slid his hand under her bra and touched her left breast. Maranda kept pushing defendant away while he continued to touch her breast, and she cried and told him to stop. He did, then told her to "pack your shit I am taking you to your aunt's house first thing in the morning." and walked out of the room.

¶ 8 Maranda locked the bedroom door, and looked at her cellular phone which showed that it was 5:36 a.m. She did not call police because she was in shock and did not know what to do. She tried to fall back to sleep, but could not do so right away. She eventually fell asleep but woke at 8 a.m., and returned to sleep before being reawakened by her sister. Maranda did not tell her sister what happened because she was with a friend, and did not feel comfortable telling her sister about the incident with the friend present. When she eventually got out of bed, she went to the backyard and went swimming in her clothes with her sister and the friend before her uncle Marco arrived to take her to the home of her uncle Brian for a family barbecue. She retrieved her clothing which was stored in defendant's bedroom, and when she entered the room, defendant was there and said, "no hard feelings." He then put his fist up, and Maranda just walked away.

¶ 9 Maranda did not tell her uncle Marco what happened because she felt uncomfortable doing so, and also did not relate the incident to anyone at her uncle Brian's home. Maranda further testified that she was to stay at her uncle Brian's home until Friday, before going to the home of her aunt, Celeste Romero, whom she considered a mother figure. She had spoken to her aunt over the phone, but did not tell her what happened because she wanted to tell her in person, and asked her aunt if she was still coming over to her house that week because she needed to talk to her. On July 11, 2008, she went to her aunt's home, and while talking to her aunt and sister there, she began to cry, and told them what happened with defendant. At that point, they went to the police station.

¶ 10 Celeste Romero testified that she is very close to Maranda who was a happy, normal, vibrant child. On July 11, 2008, Maranda came to her home with her sister, and Romero noticed that she was very quiet and not her usual self. When they started to talk, Maranda began to cry, and it was difficult to understand her at first because she was sobbing uncontrollably. She eventually told Romero what happened and she then took Maranda to the police station.

¶ 11 Defendant testified that he lives at his home with his son and daughter, a niece and her boyfriend, and his two godchildren, and has worked as a chief engineer at the same job for 23 years. Defendant testified that he has known Monica Curtis since she was three years old, that she had four children, and that they started dating in 2007. She came to live with him after residing in Elgin with her then boyfriend, Maranda and her other daughter, Isabella. While they lived with defendant, he paid for their medical care, clothing, entertainment and other basic necessities. Defendant recalled a prior incident when Maranda had snuck out of his home at 3:30 a.m. and was brought back by police.

¶ 12 Curtis and her girls lived with him until May 28, 2008, when Isabella graduated from eighth grade. After he and Curtis broke up, he told them that they had to leave, and they did so on May 28, 2008. Two weeks later, Curtis came to his home to try and work things out, but that proved unsuccessful. However, two of her daughters came to his house on July 5, 2008, and he asked them who gave them permission to come back to his house after they had been gone for almost three weeks. In the early morning hours of July 6, 2008, he heard someone enter his house, and when he asked who it was, Maranda said it was her, and he told her to call her mother. Defendant denied touching or kissing Maranda or holding his fist up to her for her to punch it. Maranda left his house that day with her uncle Brian after she and her sister, Isabella, hugged and kissed him goodbye. Defendant further stated that Maranda and Isabella did not want to stay with their grandparents who lived in Morton Grove or their aunt Celeste.

¶ 13 Following defendant's testimony, the defense rested. During jury deliberations, the jury sent the trial court the following questions: whether defendant had the option to call character witnesses and if he had a criminal record or whether that was not allowed to be disclosed. The judge responded to the jury that they had all the evidence, testimony and instructions, and to continue to deliberate. The jury then sent out several more questions, including, *inter alia*, what

were they to do if they could not reach a unanimous decision and if there was a time limit for deliberations. Defendant asked for a mistrial maintaining that the question regarding whether they had to reach a unanimous decision suggested deadlock. The court replied, however, that they had only been deliberating for two and a half hours, and that they had just posed a question and did not state that they were deadlocked. The court then instructed the jury to continue to deliberate and that there was no time limit. A half hour later, the jury found defendant guilty of two counts of aggravated criminal sexual abuse.

¶ 14 Defendant filed a motion for a new trial alleging, in relevant part, that the trial court erred when it granted the State's motion *in limine*, and, thus, violated his right to confrontation, due process of law and a fair trial. Defendant maintained that the trial court erred in its application of the rape-shield statute when it excluded testimony of an argument between Maranda and her mother regarding Maranda acting inappropriately and in a "risque and flirty fashion" toward defendant. He maintained that the trial court erroneously found that this testimony was evidence of Maranda's prior sexual activity or sexual reputation where his offer of proof did not involve any evidence of prior sexual activity or sexual reputation, but, rather, related to her acting in a risque and flirtatious manner.

¶ 15 At the proceeding on defendant's motion for a new trial, counsel essentially reiterated the allegations in his written motion. He further alleged that due to the court's ruling that the evidence he wanted to present fell within the rape-shield statute, he was unable to call witnesses, including the victim's mother, to testify that these things occurred, or to cross-examine witnesses in the matter.

¶ 16 The trial court denied the motion noting that a motion *in limine* is filed by the State as a precautionary matter without knowing exactly what defendant might go into and that the State presents such a motion in almost any type of case involving sexual conduct. The court further

explained that whether Maranda's mother said that Maranda should not be flirty or should not be wearing risque clothing had no relevance to the issues here. In the alternative, the court stated that whether Maranda flirted or wore risque clothing fell within the reputation of the victim part of the rape-shield statute, and that the rape-shield statute is to prevent "dirty[ing] up the victim." The court also noted that none of defendant's witnesses were prevented from testifying, and, in any event, that those witnesses could have testified, but not to that issue because it was irrelevant and improper.

¶ 17 At sentencing, the court entered judgment notwithstanding the verdict on count I which was based on kissing Maranda, and entered a finding of guilty on count II which was based on touching Maranda's breast. The court then sentenced defendant to three years' probation, and ordered the first three months to be spent in the Cook County Department of Corrections.

¶ 18 On appeal, defendant first contends that the trial court erred in applying section 115-7 of the Code (725 ILCS 5/115-7 (West 2008)) when the ruling on the State's motion *in limine* which had the effect of excluding exculpatory and otherwise admissible evidence that would have resulted in a different jury verdict. He specifically claims that the court should have allowed testimony from Maranda's mother and defendant that Maranda was previously disciplined by her mother for dressing inappropriately in front of defendant. He maintains that this evidence of "flirty or risque dressing" is, contrary to the trial court's contention, "non-sexual conduct which did not relate to sexual activity or reputation," and thus, falls outside the rape shield statute.

¶ 19 As an initial matter, the State responds that the court never granted its motion *in limine* on this issue, but, rather, deferred judgment on it, and that defendant subsequently abandoned any attempt to introduce this testimony at trial. The State maintains that since there was no ruling on the matter, defendant is precluded from raising this issue on appeal.

¶ 20 We observe that prior to trial, the trial court stated that it believed that the evidence the State sought to exclude by filing its motion *in limine* fell within the parameters of the rape-shield statute, but invited defendant to bring in case law to the contrary that it would look at before defendant called the witness (Maranda's mother), if he was going to call her. Defendant, however, did not pursue the matter or call Maranda's mother, but, rather, rested after presenting his own testimony which did not include any reference to Maranda's wearing of flirtatious or risque attire.

¶ 21 After reviewing the record, we find that the trial court essentially deferred its ruling on the matter when it invited defendant to bring in case law supporting his position which it would consider before the witness was called. We also find that defendant waived the issue when he did not obtain a ruling on the motion (*People v. Raymond*, 404 Ill. App. 3d 1028, 1042 (2010)), or attempt to present testimony on the matter at trial (*People v. Chatmon*, 236 Ill. App. 3d 913, 932 (1992)). Although defendant raised a related issue in his post-trial motion, this allegation was different from the representation made in his offer of proof which did not indicate that the behavior in question was directed at defendant. As such, it further supports our finding of waiver. *People v. Woods*, 214 Ill. 2d 455, 470 (2005).

¶ 22 Defendant further maintains that he was denied his right to meaningfully confront and cross-examine witnesses against him based on the trial court's ruling which "used the Rape Shield Statute as a sword." He asserts that this statute only applies to sexual history or reputation, and not to the evidence he sought to elicit in this case, namely, that Maranda dressed in a risque or flirtatious manner. The State responds that the court merely "mused" that the testimony could be barred under the Rape Shield Statute, and that, in any event, the alleged evidence was not relevant to the crime charged where defendant did not assert a consent defense which he was foreclosed from doing because the victim was under the legal age of consent.

Moreover, where defendant never attempted to present any evidence regarding Maranda's alleged flirtatious and risqué attire or an offer of proof on it during trial (see *People v. Miller*, 211 Ill. App. 3d 572, 583 (1991)) nor obtain a ruling on the matter at trial (*Raymond*, 404 Ill. App. 3d at 1042), we find that he has forfeited the issue for review.

¶ 23 Defendant next contends that the State's evidence was insufficient to prove him guilty beyond a reasonable doubt of aggravated criminal sexual abuse. He claims that Maranda's testimony was vague, doubtful and entirely uncorroborated.

¶ 24 When defendant challenges the sufficiency of the evidence to sustain his conviction, the proper standard of review is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 279-80 (2004). This standard recognizes the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence and to draw reasonable inferences therefrom. *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). A criminal conviction will be reversed on appeal only if the evidence is so unsatisfactory as to raise a reasonable doubt of guilt. *Campbell*, 146 Ill. 2d at 375. For the reasons that follow, we do not find this to be such a case.

¶ 25 Defendant was convicted of aggravated criminal sexual abuse based on facts which, if believed, proved the elements of the offense beyond a reasonable doubt. The record shows that the 15-year-old victim consistently testified that during the early morning hours of July 6, 2008, she awoke to find defendant in her bed. Defendant kissed her on the mouth and fondled her breast, then left when she cried and told him to stop. Although she made no report for five days, she explained that she was too uncomfortable to report the incident to her sister with her friend present that morning, or to anyone at her uncle's house, and waited to speak to her aunt, whom

she considered a mother figure, in person. At that time, she told her what had occurred, and immediately went to the police station to report the incident.

¶ 26 There is no requirement that the testimony of the victim of a sex-related offense be corroborated (*People v. Schott*, 145 Ill. 2d 188, 202-03 (1991); see also *People v. Le*, 346 Ill. App. 3d 41, 50 (2004)); however, the record shows that Maranda's testimony was consistent with that of her aunt. Moreover, the lack of physical evidence in this case is consistent with Maranda's testimony that there was no sexual penetration and that defendant had touched her breast. *People v. Delgado*, 376 Ill. App. 3d 307, 311 (2007); see also *People v. Jackson*, 2012 IL App (1st) 100398, ¶41. In addition, Maranda's explanation for her five-day delay in reporting the incident was a factor to be considered by the jury in deciding her credibility. *People v. Bowen*, 241 Ill. App. 3d 608, 620 (1993).

¶ 27 By its verdict, the jury clearly accepted the testimony of the State's witnesses over that of defendant, and the jury's questions to the court, including, whether they had to reach a unanimous decision, do not suggest that the jury was deadlocked, especially where it reached a verdict shortly thereafter. *People v. Gengler*, 251 Ill. App. 3d 213, 223 (1993); see generally *People v. Kittinger*, 261 Ill. App. 3d 1033, 1041 (1994) (we will not speculate as to the jury's reasoning in reaching a particular verdict). Our review of the record discloses no basis to disturb the credibility determinations made by the jury (*People v. Berland*, 74 Ill. 2d 286, 306-07 (1978)), nor the finding of guilt based thereon (*People v. Tenney*, 347 Ill. App. 3d 359, 367-68 (2004); *People v. Bofman*, 283 Ill. App. 3d 546, 553 (1996)).

¶ 28 Finally, defendant alleges in a single sentence that the trial court's responses to the jury's questions did not actually answer the questions asked. This assertion requires no response where defendant has presented no argument on it in violation of Supreme Court Rule 341(h)(7) (eff. July 1, 2008), and thus, waived it for review (*People v. Phillips*, 215 Ill. 2d 554, 565 (2005)).

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¶ 29 In light of the foregoing, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.