

No. 1-10-3623

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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. 09 CR 10819
)	
MARCUS DIXON,)	The Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE REYES delivered the judgment of the court.
Presiding Justice Rochford and Justice Hall concurred in the judgment.

ORDER

- ¶ 1 *Held:* The evidence was sufficient to establish guilt beyond a reasonable doubt of aggravated criminal sexual abuse and we affirm the convictions.
- ¶ 2 Following a bench trial, defendant Marcus Dixon was convicted of three counts of aggravated criminal sexual abuse. He was sentenced, because of his criminal background, to three concurrent Class X sentences of 18 years in prison. On appeal, defendant contends that he

was not proven guilty beyond a reasonable doubt in light of the "multiple flaws" in the testimony of the victim and her mother. We affirm.

¶ 3 Defendant was charged by indictment with, *inter alia*, three counts of aggravated criminal sexual abuse following two May 2009 incidents involving the victim, 14-year-old A.R.

¶ 4 Prior to trial, the State filed a motion pursuant to section 115-7.3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.3 (West 2008)), to admit proof of other crimes; specifically, a 1991 incident which resulted in defendant's conviction for aggravated criminal sexual assault, and a 1995 incident which resulted in defendant's conviction for aggravated criminal sexual abuse. The trial court granted the State's motion, and the matter proceeded to a bench trial.

¶ 5 At trial, the victim testified that in May 2009, she was 14 years old. She met defendant through her best friend Richard, who was also defendant's nephew, and would smoke marijuana with defendant and Richard. Defendant would also take the victim and her friends to the Kentucky Fried Chicken restaurant where he worked.

¶ 6 After defendant informed the victim that he sold drugs, the victim obtained his phone number in order to purchase marijuana. Defendant came to the victim's residence with marijuana every other day, called her, and texted her several times a day. In addition to inquiring how she was and whether she needed anything, defendant also communicated to the victim that he loved her. He brought her alcohol twice and food once, and also purchased socks for her. The victim did not want a sexual relationship with defendant, who informed her that he was 26 years old.

¶ 7 One day in May 2009, defendant came to the victim's home to smoke marijuana. The

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victim explained that when she and defendant smoked marijuana together, defendant did not charge her. While they were watching television in her bedroom, defendant began to touch her breasts and buttocks. At one point, defendant pulled down his pants and touched his penis to the victim's buttocks. Defendant also rubbed the victim's vagina with his fingers. The victim was uncomfortable and did not want defendant to touch her in this manner.

¶ 8 Several days later, defendant again came over to the victim's residence to smoke marijuana. They were on the bed watching television when defendant began to pull the victim's shoulder backward. Ultimately, the victim ended up on her back. At this point, defendant pulled down her pants and underwear, and inserted his penis into her vagina. Although the victim did not want defendant to do this, she did not protest because she was afraid of his reaction. The victim did not tell anyone about these incidents because she was afraid defendant would find out and go "crazy." She also did not want people to pity her due to these incidents.

¶ 9 During cross-examination, the victim admitted that her mother also smoked marijuana, but she denied getting marijuana for her mother from defendant. She also denied that her mother obtained marijuana directly from defendant. Although the victim admitted that she went to Kentucky Fried Chicken to get free food from defendant and that sometimes defendant would bring food to her house, she initially denied that her mother requested food from defendant. She then admitted that her mother had on one occasion requested food from defendant. The victim denied telling the police that her mother requested defendant to bring food to their home on several occasions. She admitted that she knew defendant's girlfriend, Eve Jackson, but denied sending Jackson a text message indicating that she was not doing anything with defendant and

knew that he had a "baby mama."¹

¶ 10 Elizabeth R., the victim's mother, testified that she came home from work one day to discover the victim braiding defendant's hair. Although defendant's nephew and one of the victim's friends were present, Elizabeth informed the victim that defendant had "to go," because he was too old to be there. She had no idea that defendant had been spending time at her residence when she was at work. Although she admitted that she called defendant once and asked him to bring food to the house, she denied buying marijuana from defendant.

¶ 11 Officer Kimberly Vicari testified that when she responded to a call regarding an unknown man with a child on June 3, 2009, the victim answered the door. The victim indicated that no one else was home, but Vicari saw defendant, who was shirtless and wearing unbuttoned trousers, walk out of a bedroom. Although defendant and the victim said defendant was the victim's uncle, the victim ultimately admitted that this was not true and that "something [was] going on." When Vicari asked defendant if he was the victim's uncle, he became agitated and attempted to flee. Although Vicari "maced" defendant twice, defendant was able to get away. The victim's landlord intervened and detained defendant, and defendant was taken into custody.

¶ 12 H.S., who was currently on probation for felony theft, testified that in 1995, when she was nine years old, she encountered defendant at The Dollar Store where he was employed. He inquired if she wanted something "for free." When she replied yes, he took her to the back, picked her up, and "forced a kiss and a hug" on her. He also touched her breast, buttock and

¹Although the victim believed that Jackson was defendant's girlfriend, Jackson later testified that she was defendant's wife.

vagina.

¶ 13 The parties stipulated that defendant was convicted of aggravated criminal sexual assault in case number 92 CR 1006. The parties also stipulated that defendant's date of birth was July 19, 1973.

¶ 14 The parties then stipulated that if Chicago police detective Constance Estrada was called to testify, she would testify that the victim stated that her mother requested that defendant bring the family food on several occasions. Estrada would also testify that Elizabeth initially denied that she requested defendant bring the family food, but later recanted and stated she was embarrassed that she could not feed her children.

¶ 15 Eve Jackson, defendant's wife, testified that on May 16, 2009, she received a text message from the victim, on defendant's phone. The text read "I'm not doing anything illegal, I didn't do nothing with him because I know he had a child and I know he has a baby mama, so I didn't want to get involved."² Jackson received this text in response to one that she forwarded identifying herself as defendant's wife and instructing the victim to stop texting defendant.

¶ 16 Defendant testified that his nephew introduced him to the victim because the victim and her mother were potential customers. In addition to selling marijuana to the victim and her mother, he gave them food. He also sold marijuana to Elizabeth on credit and highlighted a text in which she requested one more on her "tab." He denied having a sexual relationship with the

²Jackson paraphrased. The actual text of the message was "I kno but im not doin anything ilegal I didnt do nuthin with him cuz I kno he has a child and I knew his baby mama was u so I didnt want to get envo."

victim and asserted that he was at her residence making a sale when he was arrested. Defendant testified that he only removed his shirt after he was maced and used it to wipe his eyes. During cross-examination, defendant testified that Elizabeth would text him from the victim's phone or her own phone to request that he bring food to the family or to purchase marijuana, and that he only went to the victim's home when Elizabeth contacted him. He denied telling the victim he was 26 years old, and denied knowing the victim's age.

¶ 17 The victim was recalled and testified that during a conversation with the defendant in April 2009, he asked her to be his girlfriend, and she declined, telling him she was 14 years old.

¶ 18 Ultimately, the court found defendant guilty of three counts of aggravated criminal sexual abuse and sentenced him to 18 years in prison.

¶ 19 On appeal, defendant contends that he was not proven guilty beyond a reasonable doubt due to the "flaws" in the testimony of the victim and her mother. Defendant specifically contends that the victim was not a credible witness because she failed to inform her mother or the police about the sexual contact, continued to permit defendant to visit her residence, and denied having a sexual relationship with defendant in a text. He further argues that the testimony of the victim and her mother was incredible because they lied about how often he gave them food. Defendant finally contends that because the victim's mother owed him money, the victim had a motive to "frame" him.

ANALYSIS

¶ 20 In assessing the sufficiency of the evidence, the relevant inquiry is whether, considering 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. Ross*, 229 Ill. 2d 255, 272 (2008). This court does not retry the defendant or substitute its judgment for that of the trier of fact with regard to the credibility of witnesses, the weight to be given to each witness's testimony, and the reasonable inferences to be drawn from the evidence. *Ross*, 229 Ill. 2d at 272; see also *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006) (it is the trier of fact's responsibility to determine the appropriate weight to accord each witness's testimony, resolve any conflicts or inconsistencies in the evidence, and draw reasonable inferences from the testimony presented at trial). A conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates reasonable doubt as to a defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 21 When assessing a sufficiency of the evidence claim on appeal, this court does not retry the defendant or substitute its judgment for that of the trier of fact as to the issues of witness credibility and the weight to be given to each witness's testimony (*Ross*, 229 Ill. 2d at 272), yet this is exactly what defendant is seeking. He essentially is requesting this court to reweigh the evidence against him. Defendant's contentions on appeal focus on the credibility, or lack thereof, of the victim and her mother, and why the trial court was wrong to accord their testimony any weight.

¶ 22 Defendant was convicted of three counts of aggravated criminal sexual abuse. A person commits aggravated criminal sexual abuse when he or she commits an act of sexual penetration or sexual contact with a victim who was at least 13 years of age, but under 17 years of age and the accused was at least 5 years older than the victim. See 720 ILCS 5/12-16(d) (West 2008).

¶ 23 Considering the evidence in the record in the light most favorable to the State, there was sufficient evidence to support defendant's convictions. At trial, the victim testified that on one occasion, defendant touched her breasts and vagina, and rubbed his penis against her buttocks. On a second occasion, he pulled down the victim's pants, and inserted his penis into her vagina. When a police officer found defendant alone with the victim in the victim's residence without a shirt, defendant ran away from those officers. Additionally, the other crimes evidence, presented through the testimony of H.S., showed that defendant had previously touched a young girl on the breast, buttock, and vagina after asking her if she wanted something for free. Although defendant testified that his relationship with the victim was not sexual, *i.e.*, he was her drug dealer, the trial court did not find defendant's testimony credible, as evidenced by the convictions; this court will not substitute its judgment for that of the trier of fact on this issue. See *Ross*, 229 Ill. 2d at 272 (this court does substitute its judgment for that of the trier of fact with regard to the credibility of witnesses and the weight to be given to each witness's testimony). Ultimately, this court cannot state that no rational trier of fact could have found defendant guilty when the victim testified that defendant touched her breasts and vagina, rubbed his penis against her buttocks, and inserted his penis into her vagina. *Ross*, 229 Ill. 2d at 272.

¶ 24 Defendant, on the other hand, argues that the victim was not credible because her reaction to the alleged abuse was "improbable" when she did not inform the police or her mother about these incidents, and continued to permit defendant to enter her home. He also highlights the text in which the victim stated that she was not doing anything with defendant because he had a "baby mama."

¶ 25 A victim's testimony cannot be rejected merely because she did not report the incident to the police immediately. *People v. Bowen*, 241 Ill. App. 3d 608, 620 (1993). In fact, a delay in reporting an incident of sexual abuse may be reasonable where the victim's silence can be attributed to fear of the offender or to shame, guilt, or embarrassment. See *People v. Foley*, 206 Ill. App. 3d 709, 716 (1990). This court has previously declined to adopt a time limit before which a complaint must be made with the police in order for a victim's testimony to be considered credible as such a deadline "would place an unnecessary burden on the victim." *Bowen*, 241 Ill. App. 3d at 620. Here, the victim testified that she did not tell anyone about these incidents because that she did not want defendant to find out and "go crazy" and did not want people to pity her. Although the delay in reporting the incident to the police may be attributed to the victim's fear of defendant and embarrassment that people would know that defendant had touched her sexually (*Foley*, 206 Ill. App. 3d at 716), it was not fatal to her credibility (*Bowen*, 241 Ill. App. 3d at 620). Defendant's contention that the victim's actions were improbable, considering she permitted him to return to her home, did not tell anyone what happened, and sent a text stating that nothing was going on, were factors for the court to consider in assessing her credibility. *Sutherland*, 223 Ill. 2d at 242. Here, the trial court found the victim to be credible; we will not substitute our judgment for that of the trier of fact on this issue. *Ross*, 229 Ill. 2d at 272; see also *People v. Cunningham*, 212 Ill. 2d 274, 283 (2004) (it is for the finder of fact to judge how flaws in part of a witness's testimony affect the credibility of the whole).

¶ 26 Defendant next argues that the victim and her mother lied about how many times he gave them free food. He highlights the stipulated testimony of Estrada that the victim stated her

mother requested defendant bring the family food on several occasions, and that Elizabeth initially denied that she asked defendant for food but later recanted. Although the victim initially denied at trial that her mother requested that defendant bring them food, she then later admitted that her mother did make the request on one occasion. Elizabeth also testified that she only requested food once. While these inconsistencies may have affected each witness's credibility and the weight that the trial court accorded to their testimony (*Sutherland*, 223 Ill. 2d at 242), these inconsistencies do not relate to the central issue in this case, that is, whether sexual contact occurred between defendant and the victim. See *Bowen*, 241 Ill. App. 3d at 620 (minor inconsistencies in testimony do not, in and of themselves, create reasonable doubt).

¶ 27 Defendant finally contends that the victim was motivated to falsely implicate him because her mother owed him money for drugs. Although defendant testified that he sold drugs to both the victim and her mother, and supported this claim with a text message that he claimed was a request for additional drugs on Elizabeth's "tab," both Elizabeth and the victim denied that Elizabeth purchased marijuana from defendant. The resolution of this conflict in the evidence was for the trial court, as the trier of fact, to decide; this court will not substitute our judgment for that of the trial court on this issue. *Ross*, 229 Ill. 2d at 272.

¶ 28 Ultimately, this court cannot state that the testimony of the victim and her mother was "so wholly incredible" that it was incapable of being used as evidence against defendant. *People v. Sanders*, 2012 IL App (1st) 102040, ¶15. Although the credibility of the State's witnesses was affected by inconsistencies regarding how many times defendant gave the family free food, and whether both the victim and her mother purchased marijuana from defendant, a trier of fact is not

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required to disregard the inferences that flow from the evidence or search out all possible explanations consistent with a defendant's innocence and raise them to a level of reasonable doubt. *People v. Alvarez*, 2012 IL App (1st) 092119, ¶51. This court reverses a defendant's conviction only when the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt (*Siguenza-Brito*, 235 Ill. 2d at 225); this is not one of those cases.

Accordingly, we affirm defendant's conviction.

¶ 29 For the reasons stated above, we affirm the judgment of the circuit court of Cook County.

¶ 30 Affirmed.