2013 IL App (1st) 110004-U

FIRST DIVISION
FILED: JANUARY 22, 2013

No. 1-11-0004

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. 10 CR 4232
	)	
DONTA HUDDLESTON,	)	Honorable
	)	Michael Brown,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE HOFFMAN delivered the judgment of the court.
Justices Rochford and Delort concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's guilt was proven beyond a reasonable doubt. Trial court did not err in barring defense counsel from citing defendant's failure to confess in final argument.

¶ 2 In a bench trial, defendant Donta Huddleston was convicted of the predatory criminal sexual assault of his four-year-old son and sentenced to 15 years in prison. On appeal, defendant challenges the sufficiency of the evidence. He also contends that the trial court violated his constitutional right to present a defense by barring defense counsel, during final argument, from arguing that defendant had failed to confess.

¶ 3 At trial, 19-year-old Shonnika Huddleston testified that she had been working as a store stocker for four years. Defendant, who was 25 years old, was her cousin. In February 2010 defendant was living with her and her eight-year-old son in her Chicago apartment on South Paulina. Defendant had been living there and paying rent since September 2009. Defendant's four-year-old son, Z.H., came to visit defendant for three or four days in February 2010. Defendant stayed in the dining room, which had a bed, a television, and a couch. Shonnika's bedroom was next to defendant's room, with two glass doors between them. The glass doors had no curtains.

¶ 4 On the morning of February 8, 2010, at 4 a.m., Shonnika was awake in her bedroom, talking on the phone and watching television. Her son was asleep in her room. She had last seen defendant on the couch in his room, with Z.H. lying on the bed. Defendant's room was lighted by the television in that room. Shonnika testified that she began to hear a "bouncing noise" coming from defendant's room. When asked what that meant, she bounced up and down in her seat. She paid no attention to the noise at first, but it continued and she then saw Z.H.'s head "going down." She got up from the couch and looked in defendant's room, where she saw defendant lying on the couch, holding his erect penis in Z.H.'s mouth. When she saw this, she "bust" into the room, yelling "Donta, what the fuck are you doing." Shonnika described herself as "ranting and raving." She woke her son up and asked if defendant had touched him. He said no. She then went back into defendant's room and told him she was going to call the police. Defendant initially said nothing but then began to argue with her, and got "all in [her] face." Shonnika grabbed a knife from the kitchen and warned defendant that if he touched her she would stab him. She then called defendant's mother and the police, who arrived shortly after that.

¶ 5 On cross-examination, Shonnika stated that she had "[m]aybe 2" strawberry daquiris at about 8:30 that evening. She knew they were not strong because she watched another cousin

make them. She also stated that she brandished the knife after she made the phone calls to defendant's mother and the police. When asked how much time elapsed between when she first heard the "bouncing noise" and when she went to investigate, she stated that it "wasn't even 20 minutes maybe."

¶ 6 Defendant presented his defense through stipulations. It was stipulated that Dr. Dennis Ryan would testify that on the night in question he examined Z.H. at Christ Hospital in Evergreen Park and found no abnormalities or trauma in Z.H.'s genital or anal areas. The parties stipulated that Illinois State Police forensic scientist Michelle Bybee was an expert in the field of forensic biology. She would testify that she examined a sexual assault kit containing swabs taken from Z.H. Her examination revealed that no semen was identified from an anal swab and a circumoral swab, taken from Z.H.'s mouth and chin. A penile swab had no saliva indicated. She also examined clothing taken from Z.H. and found no semen-like stain on that clothing. The parties also stipulated that Lynn Aladeen, a forensic interviewer for the Chicago Children's Advocacy Center, would testify that she conducted a "victim sensitive" interview with Z.H. on the day of the incident. It was also stipulated that two Chicago police detectives would testify that they were present for that interview and for a second interview which occurred later that day. An assistant State's Attorney would also testify that she was present for the second interview. Finally, the parties stipulated that Z.H. was present in the courtroom on the date of trial, September 17, 2010, and was available to testify if called.

¶ 7 Following closing arguments, the trial judge found defendant guilty of predatory criminal sexual assault and sentenced him to 15 years' imprisonment. Defendant timely appeals.

¶ 8 We first consider defendant's contention that his guilt was not proven beyond a reasonable doubt. We will affirm a conviction where we find that, viewing all the evidence in the light most favorable to the State, a rational trier of fact could find the essential elements of

the crime beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 18 (2011). We will reverse a conviction on grounds of insufficiency of the evidence only if the evidence is so unreasonable, improbable or unsatisfactory that reasonable doubt of the defendant's guilt remains. *Beauchamp*, 241 Ill. 2d at 8. Although not conclusive, the fact finder's determinations of credibility are accorded great deference on review. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). We also bear in mind that the trier of fact is not required to seek out all possible explanations consistent with innocence and elevate them to reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 9 The State's eyewitness in this case gave testimony that was clear and unequivocal in its important details. Alerted to a sound she did not recognize, Shonnika Huddleston first saw Z.H.'s head go down. When she went to look through the glass doors separating her bedroom from that of the defendant, she saw that defendant was holding his erect penis in Z.H.'s mouth. The trial court heard this testimony and believed the witness, who was defendant's cousin. Although no semen was found on Z.H. or his clothing, this is unsurprising given the apparently uncompleted nature of the act which Shonnika observed. Defendant contends that it is unbelievable that this act would have gone on for 20 minutes. But Shonnika testified that she only heard the "bouncing" sound for at most 20 minutes. Furthermore, it was never established that this noise was directly related to the sexual activity. Defendant's adult cousin testified that she caught him in the act of sexually assaulting his own four-year-old son. The trial court's conclusion that Shonnika was truthful in her account of this assault is one which we find no basis for overturning. Accordingly, we reject defendant's argument that the evidence is insufficient to support his conviction.

¶ 10 Defendant's other contention is that the trial court violated his constitutional right to present a defense by barring defense counsel, during final argument, from arguing that defendant

had failed to confess. This occurred during defense counsel's final argument to the court, when he stated that there was no evidence of a "statement" despite defendant's "interaction" with the Chicago police. The court interjected that this comment implicated defendant's constitutional right to remain silent and could cause reversible error if the State chose to respond to it. The court also stated that defense counsel's argument could be considered ineffective assistance of counsel if it led the court to consider defendant's exercise of his right to remain silent. On these bases the court held that it would not consider this argument by defense counsel.

¶ 11 Defendant argues that the trial court erred by mistaking counsel's argument regarding the gap in the State's evidence as an invitation to use defendant's post-arrest silence against him as evidence. To preserve an issue for review, a defendant must both object at trial and raise the issue in a written post-trial motion. *People v. Bush*, 214 Ill. 2d 318, 332, 827 N.E.2d 455 (2005); *People v. Enoch*, 122 Ill. 2d 176, 186, 522 N.E.2d 1124 (1988). The defendant acknowledges that he failed to raise this allegation of error in a post-trial motion, but he asks that we nonetheless consider his argument pursuant to the plain error rule. See Ill. S. Ct. R. 615(a) (eff. Aug. 27, 1999). The plain-error rule derives from Illinois Supreme Court Rule 615(a) (eff. August 27, 1999), which provides that "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded" but carves an exception for "[p]lain errors or defects affecting substantial rights." This plain-error rule, our supreme court has explained, "bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved error when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." *People v. Herron*, 215 Ill. 2d 167, 186-87, 830 N.E. 2d 467 (2005).

¶ 12 On the first prong of the plain-error rule, we conclude, based on our above summary of the prosecution's evidence, that the evidence here was not closely balanced. On the second

prong, the defendant argues that the trial court's error prevented him from presenting a "crucial portion" of his defense: the point that the State's evidence did not include the defendant's confession. There is, of course, no requirement that a defendant confess in order to be convicted; the defendant's argument to us is that the trial court's ruling prevented him from highlighting the absence of a confession to help illustrate the weakness of the State's case. However, the record indicates that the court reached its guilty finding only after evaluating the strength of the evidence the State actually presented (and, thus, implicitly, evaluating the necessity of the evidence the State did not present). Thus, to the extent the trial court erred in foreclosing argument on the absence of a confession, we do not deem the error so serious as to meet the second prong of the test for plain-error review.

¶ 13 In another effort to meet the second prong of the above test, defendant points out that the trial judge's actions amounted to a prohibition of closing argument and thus a violation of the sixth amendment. See *Herring v. New York*, 422 U.S. 853, 95 (1975). In so arguing, defendant overstates the alleged error worked against him. The trial court unquestionably allowed closing argument, and thus the defendant's rights on that point were not abridged. Accordingly, we conclude that defendant's second contention of error on appeal does not amount to plain error, and we therefore deem it forfeited.

¶ 14 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 15 Affirmed.