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2013 IL App (3d) 110859-U

Order filed July 5, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

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|--------------------------------------|---|-------------------------------|
| THE PEOPLE OF THE STATE OF ILLINOIS, |) | Appeal from the Circuit Court |
| |) | of the 12th Judicial Circuit, |
| Plaintiff-Appellee, |) | Will County, Illinois, |
| |) | |
| v. |) | Appeal No. 3-11-0859 |
| |) | Circuit No. 08-CF-744 |
| |) | |
| ERNEST P. GARZA, |) | Honorable |
| |) | Daniel J. Rozak, |
| Defendant-Appellant. |) | Judge, Presiding. |

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Wright and Justice Lytton concurred in the judgment.

ORDER

- ¶ 1 *Held:* The evidence was sufficient to prove the defendant's guilt of aggravated battery beyond a reasonable doubt.
- ¶ 2 The defendant, Ernest P. Garza, was found guilty of aggravated battery (720 ILCS 5/12-4(b)(10) (West 2008)) and sentenced to 30 months' probation. On appeal, the defendant argues that the evidence was not sufficient to prove his guilt of aggravated battery beyond a reasonable doubt because the victim's testimony was inconsistent and impeached. We affirm.

¶ 3

FACTS

¶ 4 On August 11, 2011, the defendant was charged by indictment with two counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(a)(3) (West 2008)) and one count of aggravated battery (720 ILCS 5/12-4(b)(10) (West 2008)). On August 11, 2011, the matter proceeded to a bench trial.

¶ 5 The record established that the victim was the defendant's mother. The victim testified that on the date of the incident, she was 66 years old.

¶ 6 The victim further stated that around April 1, 2008, she called the defendant for help with some legal paperwork. The defendant came over around 8 p.m. The defendant argued with the victim because he believed that the victim might have killed his father and she let her deceased husband's family control the finances. At one point, the defendant showed the victim an e-mail that he had sent to his cousin. Thereafter, the defendant went to a pornographic website. The victim asked the defendant to shut down the computer because she did not want pornography in her house. The defendant became upset and started to argue with the victim. The victim got up and went to another room to sit in a chair. The defendant pulled her up from the chair, pushed her down onto the couch, pinned her in place, and continued to argue. Eventually, the defendant allowed the victim to get up and go to the bathroom. While the victim was in the bathroom, she noticed that the defendant was peeking at her between the door frame and door. The defendant then pushed the door open, walked into the bathroom, removed his pants, and forced the victim's head and shoulders into him. The victim recalled that the defendant's penis was exposed, but she did not remember touching his penis. The victim noted that her memory was not clear because she was "freaked out."

¶ 7 As the victim left the bathroom, the defendant pulled her toward the bedroom and pushed her down onto the bed. The defendant instructed the victim to remove her "under clothes" and got onto the bed with the victim. The defendant then got on top of the victim and rubbed his penis against the victim's vagina, kissed her vagina, and fondled her breasts. The victim could not remember how long the defendant engaged in these actions because she was "freaked" and she tried to suppress the memories. In the morning, the victim left the house and went to the Braidwood police department.

¶ 8 On cross-examination, the victim stated that she reported the incident to the police on April 1, 2008. On that date she filed a report with Officer Jack McCasland. The victim did not remember telling McCasland that prior to the incident, the defendant was acting increasingly bizarre and that he was having conversations with his dead father. The victim also did not recall telling McCasland that the defendant made sexual comments toward her, told her to fulfill her wifely duties, and removed her pants. The victim denied telling McCasland that she had an orgasm when the defendant put his lips on her vagina. However, the victim maintained that on the day of the incident, the defendant pinned her on the couch, pulled her by the arms into the bedroom, and pushed her onto the bed.

¶ 9 On redirect examination, the victim admitted that the events happened approximately three years ago. As a result, there were some things that she did not recall because her memory had faded and some of the actions were difficult to speak of. The victim noted that her memory of the event was clearer when she spoke with McCasland, but she did not lie to the police and she was not testifying falsely. The victim concluded that the defendant was her son and she forgave him for his acts.

¶ 10 Following the victim's testimony, the defendant introduced McCasland's police report into evidence. In the report, the victim stated that the defendant began telling family members two years before the incident that he was having conversations with his deceased father. In the months leading up to the incident, the defendant claimed that he was acting on behalf of his deceased father. Around the same time, the defendant started making sexual comments toward the victim.

¶ 11 The report further stated that on the night of the incident, the defendant showed up at the victim's apartment unannounced. The defendant told the victim that he was there to assist her with some legal paperwork. Once the paperwork was complete, they began talking about the content of an e-mail a relative claimed that the defendant had sent. The defendant became angry and insisted that the victim see the e-mail for herself. After they viewed the e-mail, the defendant's personality changed, and he pushed the victim down onto the couch and began lecturing her about how he was in control. During this lecture, the defendant referred to himself as his father and tried to convince the victim to have sex with him. The defendant eventually allowed the victim to get up to go to the bathroom. The defendant stood in the doorway and continued to lecture the victim as she used the bathroom. When the victim attempted to return to the living room, the defendant grabbed her and forced her into the bedroom. Inside the bedroom, the defendant pushed the victim onto the bed and placed himself on top of the victim. The defendant placed his hand over the victim's mouth to keep her from screaming, fondled her breasts, and removed the victim's pants. The defendant then touched the victim's vagina and kissed her body, stopping at her breasts and continuing to her vagina. The defendant's actions reportedly caused the victim to orgasm several times. The defendant then attempted to place his

penis inside of either the victim's vagina or anus. The next day, the victim left the house around 8 a.m.

¶ 12 At the close of the interview, McCasland directed the victim to undergo a sexual assault examination at Riverside Medical Center and arranged for the evidence to be collected from the scene.

¶ 13 The parties stipulated that no deoxyribonucleic acid (DNA) was recovered from any of the parties or exhibits and introduced the records from the victim's sexual assault examination. The sexual assault records noted that the victim had a contusion on the right side of her neck and that she had some peri-vaginal abrasions and localized trauma.

¶ 14 After closing arguments, the trial court found the defendant not guilty of two counts of aggravated criminal sexual abuse and guilty of one count of aggravated battery. Later, the trial court sentenced the defendant to a term of 30 months' probation. The defendant appeals.

¶ 15 ANALYSIS

¶ 16 On appeal, the defendant argues that the evidence was insufficient to prove beyond a reasonable doubt that he had committed the offense of aggravated battery. Namely, the defendant contends that because the victim was impeached and her testimony was inconsistent with the physical evidence and police report, she lacked overall credibility.

¶ 17 When presented with a challenge to the sufficiency of the evidence, it is not our function to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187 (2006). Instead, we must determine, after viewing the evidence in the light most favorable to the prosecution, if any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1 (2011).

¶ 18 To sustain an aggravated battery conviction, the State must prove beyond a reasonable doubt that the defendant intentionally or knowingly and without legal justification caused bodily harm to an individual or made physical contact of an insulting or provoking nature, while knowing that the person harmed was 60 years of age or older. 720 ILCS 5/12-3, 12-4 (West 2008).

¶ 19 In the instant case, the defendant argues that the State failed to satisfy its burden of proof because the victim's testimony was so inconsistent as to the criminal sexual abuse charges as to render her testimony incredible on the aggravated battery charge. After reviewing the record, we find that the State satisfied its burden as to the aggravated battery charge. While the victim's recollection of the sex-based offenses was frequently inconsistent with her statement to the police, her testimony regarding the aggravated battery charge was consistent and corroborated by the police report. Specifically, the victim testified that on the night of the incident the defendant pushed her onto the couch, pinned her down on the couch, pulled her from the bathroom to the bedroom, and pushed her onto the bed. The victim reasserted many of these facts during cross-examination, and the police report corroborated several of these statements. Viewing these facts in the light most favorable to the State, we conclude that the evidence was sufficient for the trial court to find that the defendant had committed the offense of aggravated battery.

¶ 20

CONCLUSION

¶ 21 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 22 Affirmed.