2015 IL App (1st) 141909-U

SIXTH DIVISION
DATE: December 23, 2015

Nos. 1-14-1909 and 1-14-1910
(CONSOLIDATED)

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.	)	Nos. 12 CR 18178
	)	12 CR 18179
	)	
ALONZO TERRELL,	)	Honorable
	)	Clayton J. Crane,
Defendant-Appellant.	)	Judge Presiding.

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

ORDER

¶ 1 *Held:* We affirm the defendant's convictions for aggravated criminal sexual abuse over his contention that the trial court erred in denying his pretrial motion to suppress his inculpatory statements to detectives.

¶ 2 Following a bench trial, the defendant, Alonzo Terrell, was convicted of aggravated criminal sexual abuse of two minor victims and sentenced to concurrent prison terms of 5 1/2 years. On appeal, the defendant contends that the trial court erred in denying his pretrial motion to suppress inculpatory statements that he made to detectives following his arrest. We affirm.

¶ 3 The defendant was arrested at about 9:30 p.m. on August 28, 2012, and later charged with aggravated criminal sexual abuse and sexual exploitation of Z.M. (12 CR 18178) and A.R.

(12 CR 18179), both under the age of 13.[1] Before trial, the defendant filed a motion to suppress statements from his interrogation, claiming that detectives questioned him without giving him access to an attorney even after he invoked the right to counsel.

¶ 4 At the suppression hearing, the defendant testified on direct examination that he was arrested on August 29, 2012, brought to the police station, handcuffed, and left in the "bullpen" for 30 minutes to an hour. Two female detectives then brought the defendant to another room and read him his rights. The defendant asked to talk to his lawyer and his sister, who was a police officer, "to make sure [that he] had [his] lawyer by [his] side or, you know, [to] talk to somebody when they started interviewing [him]," but the detectives did not let him make a call. The defendant repeated his request to call his sister and one of the detectives said "[t]hat doesn't mean anything." The detectives then interviewed the defendant and he answered their questions. According to the defendant, they yelled at him, saying "you know that you did it" and "if you don't tell the truth, you are going to make the situation even worse for you." The defendant considered these statements intimidating and hurtful. After an hour, the detectives returned the defendant to the "bullpen," where he waited for two hours. At about midnight, the detectives returned and questioned the defendant a second time, and did not let him call a lawyer.

¶ 5 On cross-examination, the defendant acknowledged that he was arrested at about 9:40 p.m. on August 28, 2012, and that the first interrogation occurred at 11 a.m. on August 29, 2012. One of the detectives read the *Miranda* rights and told the defendant to sign a paper titled "advisement of rights and waiver." The defendant signed the paper and initialed each right, but stated the detective did not let him read the paper and he did not know what he was signing. The

[1] Prior to trial, the State dropped the charge of sexual exploitation of A.R. in 12 CR 18179. The defendant was also charged with, but acquitted of, offenses against J.R.

detectives conversed with the defendant, left, and returned at about midnight with food. The defendant agreed to take a polygraph exam, which was administered by a different detective who provided written *Miranda* rights and asked the defendant to sign the form. The defendant did not tell the detective that he wanted an attorney or that the other detectives refused his request. Afterwards, the defendant spoke with the female detectives and an assistant State's Attorney, who recited his *Miranda* rights. The defendant further testified that he was literate and graduated from college with a degree in physical education and recreation. He confirmed that he knew of his right to talk to an attorney and have an attorney present.

¶ 6 On redirect examination, the defendant testified that he did not persist in requesting an attorney because he thought his first request "was good enough" and "didn't know I had to ask all detectives in there for a lawyers [*sic*]."

¶ 7 Detective Emily Rodriguez testified that she interviewed the defendant with Detective Vogel at 11:20 a.m. on August 29, 2012. Detective Vogel read the defendant the *Miranda* rights from a form that the defendant and both detectives signed. The defendant indicated that he understood his rights, agreed to waive them, and would take a polygraph exam. Detectives Rodriguez and Vogel left and returned with food at about 8 p.m., at which time Detective Vogel provided oral *Miranda* rights. After the polygraph exam, Detectives Rodriguez and Vogel continued interrogating the defendant and he made an inculpatory statement. The detectives called an assistant State's Attorney, who arrived at approximately 12:15 a.m., introduced herself, and recited the *Miranda* rights. The defendant repeated his inculpatory statement. Detective Rodriguez denied that the defendant asked for an attorney and did not recall whether he asked to speak to his sister. She also denied that she or Detective Vogel yelled, but admitted that she asked the defendant “why he had done stuff” because she believed that he was guilty.

¶ 8 Following the hearing, the trial court denied the defendant's motion to suppress statements. In its findings, the court stated that the defendant was clearly given his *Miranda* rights. The court explained:

> "The court having the ability to observe the witnesses, their interest and biased [*sic*] as they testified in this case.
>
> * * *
>
> The defendant indicates although having been given his Miranda Rights the first time that he requested an attorney.
>
> He had his wits about him at that time to request an attorney but based upon his testimony didn't have his wits about him to read a piece of paper that contains the Miranda rights and sign it because he didn't know what it was.
>
> And he just acted spontaneously based upon the directions of the two detective [*sic*] and yet he had is [*sic*] wits about him to request an attorney at that point. Let me see—the side issue.
>
> His sister. He has no right to see his sister. He has no right to see his priest. He has no right to see anybody.
>
> Miranda Rights only apply to lawyers at that point.
>
> He then indicates that upon further questioning by the detectives he was yelled at and then subsequently gives an inculpatory statement.
>
> The question is whether his will was overborne by the action of the police officers.

> I would bet about 95 percent of the time when I am in an interviewing room that cop is interviewing me thinks that I did whatever I did, otherwise I wouldn't be in that room.
>
> She is reinforcing what her opinion is.
>
> But I don't find the defendant having observed the defendant and behaviors, responses to the questions in this courtroom that is [*sic*] his will was overborne."

¶ 9 The trial court then joined the cases against the defendant and set the matter for bench trial.

¶ 10 At trial, Lillian Marrero testified that the defendant dated her mother, Edith Chacon, and spent weekends at Chacon's house, located at 5469 West Chicago Avenue in Chicago. Marrero's daughter, A.R., often visited Chacon on weekends in 2012. On June 16, 2012, while at Chacon's house, Marrero asked A.R. and her niece, Z.M., whether anyone touched them. Z.M. stated that the defendant smelled her vagina over her clothing and exposed himself to her. A.R. stated that the defendant touched "her butt and her vagina" over her clothing, and that, earlier that day at Marrero's house, he pinned her against the couch with "his penis on her butt," causing a red mark on her stomach. Marrero was asleep when the incident occurred but Z.M. and Chacon were also in the house. Marrero did not believe other children were present. She took the girls to the hospital on June 18, 2012, and to Children's Advocacy Center on June 22, 2012. Later, at Chacon's request, Marrero read and signed a document stating that A.R. recanted her accusations and that Marrero did not want to proceed with the case. According to Marrero, at that time, she did not know the meaning of the word "recant," but signed the document because she did not want to go to court with her daughter. She denied that A.R. told her the abuse did not occur.

¶ 11 Z.M. testified that she was 11 years old at the time of trial. She stated that, on one occasion while she was at Chacon's house, she was on the defendant's shoulders when he dropped her on a bed, smelled her private part, and drooled on her. On other occasions, also at Chacon's house, the defendant touched her buttocks over her clothing and exposed himself. At Marrero's house, she saw the defendant push A.R. against the couch and press his front part against her buttocks. Z.M. did not remember everyone who was in the house at that time but believed Chacon was home. That day, she told Marrero about the abuse, but never told anyone else because she was scared and Marrero was the only person she could trust. She denied that the defendant ever offered her candy or beer.

¶ 12 A.R., who was 11 years old at the time of trial, testified that, on multiple occasions at Marrero’s and Chacon's houses, the defendant reached beneath her clothes and touched her buttocks, which scared her. On one occasion, the defendant held her upside down with her head on his private part, then threw her on a bed and sniffed her private part, causing her to kick him. At Marrero's house, she once saw the defendant with his arms around Z.M. A.R. pulled her away but was pinned against the couch by the defendant, who pumped A.R.'s back while his penis was hard. At the time, other children were in the house but Marrero, Chacon, and A.R.'s aunt and uncle had gone shopping. Later that day, she told Marrero what had happened.

¶ 13 Derrick Anderson testified that he met the defendant in jail. According to Anderson, the defendant told him that he touched the girls' private parts as they slept, and, on another occasion, bent A.R. over the couch and "let his dick touch her behind." The defendant also told Anderson that one incident occurred at Chacon's house and another incident occurred downtown. The defendant stated that he gave the girls candy and alcohol, and would "holler at them to keep them

from telling their parents." Anderson denied that the defendant wrote and signed a statement regarding these incidents.

¶ 14 Anderson further testified that he had convictions for felony possession of a controlled substance and unlawful use of a weapon by a felon. In exchange for his testimony, Anderson received a plea agreement of five years in prison for aggravated battery. Other charges for aggravated robbery, kidnapping, and unlawful restraint were dropped. As a result, he was not incarcerated at the time of trial.

¶ 15 Dr. Amy Yuksel testified that she conducted separate interviews and examinations of A.R. and Z.M. on June 18, 2012. A.R. indicated that the defendant touched her vagina and buttocks while she was clothed and once "dry humped her with his clothes on and her clothes on." Z.M. indicated that the defendant once touched her vagina and buttocks while she was clothed, and, on the Saturday before the examination, "spread her legs apart, [and] smelled her genital area." Dr. Yuksel further testified that she did not see any bruises on A.R. and would not expect to find physical evidence supporting the type of contact that the victims described.

¶ 16 Marilyn Soto, a Chicago police officer and forensic interviewer for the Chicago Children's Advocacy Center, testified that she conducted separate videotaped interviews with A.R. and Z.M. on June 22, 2012. Both interviews were recorded and made available to the State's Attorney's office. Videos of both interviews were entered into evidence, but only the video of Soto's interview with Z.M. was included in the record on appeal.

¶ 17 Detective Rodriguez testified that she and Detective Vogel interviewed the defendant while he was in custody at 9:30 p.m. or 10 p.m. on August 29, 2012. The defendant admitted that he exposed himself to A.R. and her cousin. The defendant "rubbed on [A.R.'s] butt" and stated "his penis would get hard when he would grind on [A.R.]." The defendant further stated

that he would swing the girls around and "his face would go on their butts, possibly their vaginas." The defendant admitted that he would get an erection "but he realized it was wrong, [and] he would stop." He did not admit to giving candy or alcohol to any of the girls to keep them quiet. Detective Rodriguez did not write down the defendant's statements or ask him to sign a written statement. None of his statements were videotaped.

¶ 18 The State presented a certified copy of the defendant's birth certificate showing that he was 46 years old at the time of trial. The State then rested and the trial court denied the defendant's motion for directed verdict.

¶ 19 Chacon testified that the defendant was her fiancé and she had known him for 8 1/2 years at the time of trial. She never saw the defendant inappropriately touch any of her grandchildren, but said that Marrero disliked the defendant and "always had a comment that she hate [*sic*] blacks." Chacon stated that A.R. and Z.M. visited her house only once or twice in 2012. The girls disliked the defendant, did not play with him, and "would call him names and give him the middle finger." Chacon did not allow the girls to be alone with the defendant because they were disobedient and disrespectful. On June 18, 2012, Chacon was at Marrero's home with the defendant, Marrero, other adults, and six children, including A.R. and Z.M. All of the adults except the defendant went to the store across the street for 5 to 10 minutes. When Chacon returned, nothing was out of the ordinary, the couch had not been moved, and the children did not mention anything about A.R. and the defendant. Chacon acknowledged she was not happy that the defendant was charged and that she gave Marrero a declaration to sign. She denied that she had the declaration created or that she asked Marrero to sign it.

¶ 20 The defendant testified that he had a good relationship with Z.M. and A.R. He sometimes wrestled and played around with the girls in the front room of Chacon's house but

never in the bedrooms or kitchen. On June 18, 2012, the defendant was at Marrero's house with five other adults and six children, including A.R. and Z.M. The other adults left the house for 10 or 15 minutes but the defendant stayed behind, watching television in the same room as the children. According to the defendant, this was the only occasion that he was alone with the children. He denied touching any of the girls in a sexual manner or telling police officers he had done so. After officers accused him of abusing the girls and exposing himself to them, the defendant told the officers that the girls had lied. He also told the officers that, on one occasion, Z.M. asked him to pick her up so she could touch the ceiling and after doing so he put her down. The defendant acknowledged meeting Derrick Anderson in jail and telling him about the accusations, which he described as untrue. The defendant stated that both Detectives Rodriguez and Anderson lied in their testimony. The defense then rested.

¶ 21 At the close of trial, the trial court found the defendant guilty of two counts of aggravated criminal sexual abuse and one count of sexual exploitation of Z.M. (12 CR 18178) and two counts of aggravated criminal sexual abuse of A.R. (12 CR 18179). In its findings, the court explained that it did not consider Anderson's testimony because he was a "jailhouse snitch." The court acknowledged Chacon's testimony but recognized that she had "very deep feelings for the defendant." However, the court had "no doubt" about the testimony of A.R. and Z.M. The court denied the defendant's motion for new trial. At sentencing, the court found the three counts in 12 CR 18178 merged into a single count of aggravated criminal sexual abuse. The court also found the two counts in 12 CR 18179 merged into a single count of aggravated criminal sexual abuse. The court sentenced the defendant to 5 1/2 years' imprisonment in each case, with the sentences to run concurrently.

¶ 22 On appeal, the defendant contends that the trial court erred when it denied his motion to suppress statements that he made to detectives who interrogated him without giving him access to an attorney even after he invoked the right to counsel. According to the defendant, the court found that he requested an attorney but that his will was not overborne when he made subsequent inculpatory statements. The defendant argues, however, that any statements made after he invoked the right to counsel were necessarily involuntary. He notes that his statements occurred only after he was subject to two interrogations, a polygraph exam, and being left in a "bullpen" or holding cell, and claims that the detectives' refusal to let him contact family caused him to believe that no help was available until he gave a statement to police. Further, the defendant contends that the admission of his inculpatory statement was not harmless beyond a reasonable doubt due to the extreme probative weight of his confession and the lack of physical evidence at trial. He argues that Marrero, who disliked him and was racially prejudiced, elicited the victims' accusations but later signed a recantation.

¶ 23 The State responds that the trial court did not err in admitting the inculpatory statements because the court found that the defendant did not invoke the right to counsel. The State maintains that even if the trial court's decision in denying the defendant's motion to suppress was erroneous, any error was harmless where other evidence at trial established the defendant's guilt.

¶ 24 When reviewing a trial court's ruling on a motion to suppress evidence, we apply a two-part standard of review. *People v. Johnson*, 237 Ill. 2d 81, 88 (2010). Findings of fact and credibility determinations made by the trial court are accorded great deference and will be reversed only if they are against the manifest weight of the evidence. *People v. Slater*, 228 Ill. 2d 137, 149 (2008); *People v. Kronenberger*, 2014 IL App (1st) 110231, ¶ 28 (a judgment is against the manifest weight of evidence only when the opposite conclusion is apparent or the

findings appear unreasonable, arbitrary, or not based upon evidence). However, we review *de novo* the ultimate question of whether the motion to suppress should have been granted. *Slater*, 228 Ill. 2d at 149. The reviewing court may consider testimony from both the suppression hearing and the trial. *Id*.

¶ 25 Prior to any interrogation by law enforcement officials, a person in custody must be advised of the right to remain silent and the right to counsel. *In re Christopher K.*, 217 Ill. 2d 348, 376 (2005) (citing *Miranda v. Arizona*, 384 U.S. 436, 444 (1966)). If an accused invokes the right to counsel, questioning must stop unless the accused initiates further communication with police. *People v. Woolley*, 178 Ill. 2d 175, 197 (1997) (citing *Edwards v. Arizona*, 451 U.S. 477, 485 (1981)). If the police subsequently initiate a conversation with the accused in the absence of counsel, the accused's statements are presumed involuntary and a motion to suppress will be granted. *Id*. at 198.

¶ 26 As an initial matter, the parties dispute whether the trial court found that the defendant invoked his right to counsel. The testimony at the suppression hearing was conflicting. The defendant testified that after he was given his *Miranda* rights, he asked to talk to his lawyer and the two female detectives refused to let him call an attorney. Detective Rodriguez testified that the defendant never invoked his right to counsel; rather, he indicated that he understood his rights and agreed to waive them. In its findings following the suppression hearing, the trial court stated:

> "The defendant indicates although having been given his Miranda Rights the first time that he requested an attorney.

> He had his wits about him at that time to request an attorney but based upon his testimony didn't have his wits about him to read a piece of paper that contains the Miranda rights and sign it because he didn't know what it was.
>
> And he just acted spontaneously based upon the directions of the two detective [*sic*] and yet he had is [*sic*] wits about him to request an attorney at that point."

We cannot say that the trial court found that the defendant invoked his right to counsel. From a cold record, neither a reviewing court nor an appellate advocate can know the nuances or inflections of a given statement, whether it be a witness, a party, or the trial court. See *People v. Knuppel*, 65 Ill. App. 3d 1022, 1026 (1978) (a reviewing court "cannot ascertain from the cold record all of the emotions" in statements made at trial). To reconcile contrary interpretations of the same language, we look to the statement in context. See *People v. Canizalez-Cardena*, 2012 IL App (4th) 110720, ¶ 22 ("a court of review should consider the record as a whole, rather than focusing on a few words or statements by the trial court"). Here, we read the findings as a whole to show that the court did not accept the defendant's testimony; rather, it restated the defendant's testimony to highlight its inconsistencies. As the court noted, the defendant claimed that "[h]e had his wits about him at that time to request an attorney" yet "didn't have his wits about him to read a piece of paper that contains the Miranda rights." Notably, the court next considered whether the defendant's will had been overborne by the detectives who interrogated him. Had the court found that the defendant invoked the right to counsel, this analysis would be unnecessary because the defendant's subsequent comments to police would be presumed involuntary and inadmissible at trial. *Woolley*, 178 Ill. 2d at 197-98 (where police initiate conversation after the defendant invokes his or her right to counsel, the statements are

inadmissible); *People v. Kluxdal*, 225 Ill. App. 3d 217, 223 (1991) (where the trial court presumed to know and apply law properly absent affirmative showing to the contrary in record).

¶ 27 The trial court's finding that the defendant did not invoke his right to counsel was not against the manifest weight of the evidence. *People v. Gaytan*, 2015 IL 116223, ¶ 18 (the reviewing court will uphold the trial court's factual findings on a motion to suppress unless the findings are against manifest weight of evidence). Detective Rodriguez testified that the defendant never invoked his right to counsel; instead, he indicated that he understood his rights, agreed to waive them, and afterwards made an inculpatory statement. Here, Detective Rodriguez's testimony was sufficient to support the finding that the defendant did not invoke the right to counsel. *People v. Walker*, 2012 IL App (1st) 083655, ¶ 46 (in ruling on a motion to suppress, the trial court assesses credibility and demeanor of the witnesses and resolves conflicts in the evidence).

¶ 28 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.