2015 IL App (3d) 150137-U

Order filed July 27, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re T.C.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
a Minor	)	Whiteside County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-15-0137
	)	Circuit No. 13-JD-90
v.	)	
	)	
T.C.,	)	Honorable
	)	William S. McNeal,
Respondent-Appellant).	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence at the adjudicatory hearing was insufficient to establish the use of force element of criminal sexual abuse (720 ILCS 5/11-1.50(a)(1) (West 2012)).

¶ 2 The respondent, T.C., a minor, appeals his delinquent adjudication for criminal sexual abuse of another minor, T.H. Count I alleged that the respondent committed criminal sexual abuse (720 ILCS 5/11-1.50(a)(1) (West 2012)), a Class 4 felony, in that on or about September

2012, the respondent, by the use of force, knowingly placed his penis inside the vagina of T.H. for the respondent's sexual arousal or gratification.[1] We reverse and remand for further proceedings.

¶ 3 FACTS

¶ 4 An adjudicatory hearing was held on December 16, 2014. Jeremy Leitzen, a police officer, testified that on August 27, 2013, he received a report from the Department of Children and Family Services that the respondent had committed an act of criminal sexual abuse. The report involved an allegation that the respondent sexually abused T.H. approximately one year prior. Leitzen investigated the report and set up an interview with T.H. at April House, a child advocacy center. Leitzen was present during the interview on September 5, 2013.

¶ 5 A video recording of the September 5, 2013, interview between T.H. and a forensic interviewer was admitted at the adjudicatory hearing.[2] During the interview, T.H. was asked what the difference between a truth and a lie was, and T.H. replied that the truth has more details

[1] The respondent was also adjudicated delinquent on an additional count (count II) of committing criminal sexual abuse against T.H. The respondent does not challenge this specific adjudication (count II) on appeal. For purposes of clarity, however, we note that count II alleged that the respondent committed criminal sexual abuse (720 ILCS 5/11-1.50(b) (West 2012)), a Class A misdemeanor, in that on or about September 2012, he knowingly placed his penis inside the vagina of T.H. for his sexual arousal or gratification at a time when the respondent was under 17 years of age and T.H. was at least 9 years of age but under 17 years of age.

[2] While the video was introduced after T.H.'s testimony and admitted for the sole purpose of impeachment of said testimony, we have included it in this portion of the facts in order to give context to T.H.'s testimony at the adjudicatory hearing.

than a lie. T.H. said that she met the respondent in the park in September of 2012 and left with him to go to another friend's house. They stopped at the respondent's house on the way because he wanted to change his shirt. She went downstairs to the respondent's bedroom with him. The respondent was wearing basketball shorts and no shirt. T.H. was wearing jeans and boots. The respondent removed T.H.'s boots. The respondent tried to kiss T.H. and remove her pants, and T.H. said no. The respondent removed T.H.'s jeans and underpants anyway and spread her legs apart. Initially, the respondent inserted his penis into T.H.'s vagina with no protection. T.H. had begun menstruating and she knew that she could become pregnant from having unprotected sexual intercourse.

¶ 6 The respondent left the room. T.H. was afraid to leave because she thought the respondent might be at the top of the stairs and yell at her and tell her to go back down. T.H. tried putting her pants back on, but pulled them back down when she heard the respondent coming back downstairs. The respondent had a Ziploc bag when he came back into the bedroom. T.H. thought the respondent had the Ziploc bag downstairs, but said he might have gone upstairs to get it. The respondent put the Ziploc bag on his penis and used it for a condom. The respondent again inserted his penis into T.H.'s vagina. After they had sexual intercourse, T.H. went with the respondent to his friend's house. She was scared to leave because she thought if she left right away, the respondent would think she was going to tell someone and get him into trouble. T.H. told a friend what happened about a week later, and her friend offered to try to get a pregnancy test for T.H. T.H. explained that she did not initially tell anyone what happened with the respondent because she did not understand what "rape" was at the time and she thought she was a bad person.

¶ 7 T.H. testified at the adjudicatory hearing that she was a freshman in high school. T.H. identified the respondent, and said that she knew him because she and the respondent's sister, S.C., used to be best friends. T.H. and S.C. were in the same grade. The respondent was two years ahead of T.H. in school. T.H. considered the respondent to be her boyfriend the summer after she completed sixth grade, *i.e.*, the summer of 2012.

¶ 8 In September of 2012, T.H. was in seventh grade and the respondent was in high school. There was an early dismissal from school and T.H. went to the park. She planned to walk to a youth group after she went to the park. At the park, T.H. encountered the respondent. T.H. and the respondent talked for awhile and left together approximately 10 minutes after T.H. arrived at the park. The respondent told T.H. that they were going to the house of his friend, S.K.

¶ 9 On the way to S.K.'s house, T.H. and the respondent stopped at the respondent's house because he said he needed to change his clothes. T.H. had been there before when she was friends with S.C. When they walked inside the house, the respondent told T.H. to come downstairs to his bedroom with him because he did not know when his mother or S.C. would be home. T.H. had been in the respondent's bedroom once before to play a video game with the respondent and S.C.

¶ 10 T.H. went into the respondent's bedroom and sat down on the bed. The respondent kissed T.H. on her lips. T.H. told the respondent not to kiss her because she had a new boyfriend. The respondent pulled T.H.'s pants off, and she told him not to. T.H. was wearing boots. T.H. testified that her pants were not completely removed and she thought she was still wearing her boots. T.H. believed her pants were probably down to her ankles, however she did not specifically remember. At another point during her testimony, T.H. stated that she remembered her pants went down to her ankles, but she did not know if they came all the way off. T.H. did

acknowledge that she may have said during a prior interview that the respondent took her pants off and threw them on the floor, but she did not remember. The respondent did not remove his clothes. The respondent was wearing a shirt and T.H. did not remember him removing it. He unzipped his pants but did not remove them all the way.

¶ 11 T.H. tried to push the respondent away but he was bigger than her. The respondent inserted his penis inside her vagina, and T.H. told him no. The respondent used a Ziploc bag for a condom. T.H. did not remember how long the respondent's penis was inside her vagina. T.H. tried to get up and leave, but she was unable to. The respondent was not holding her down but he would not let T.H. get up when she tried to push him away. T.H. never told the respondent it was okay for him to have sexual intercourse with her.

¶ 12 T.H. did not remember saying in her April House interview that the respondent left the room at one point to get the Ziploc bag and that she put her pants back on while the respondent was gone but removed them again before he came back. T.H. did not remember the respondent leaving the room during the incident.

¶ 13 After the respondent had sexual intercourse with her, T.H. and the respondent left the respondent's house and walked to S.K.'s house. T.H. testified that she did not know why she left the house with the respondent after the incident. After they arrived at S.K's house, T.H. said she had to leave and go to the park because her parents were going to pick her up. T.H. told her parents about the incident approximately a year later in August 2013. T.H. waited a long time to tell her parents what happened because she was afraid the respondent would hurt her or her parents would think poorly of her.

¶ 14 The respondent touched T.H. in a way she did not want him to on one prior occasion when T.H. was in sixth grade and the respondent was in eighth grade, the respondent grabbed

T.H.'s buttocks. She did not remember him touching her in any other places. The respondent had previously asked T.H. to have sexual intercourse with him in text messages.

¶ 15 T.H. stopped being friends with S.C. after the incident with the respondent, but not immediately after the incident. T.H. denied making up the incident with the respondent because she was angry at S.C. T.H. stated that the difference between the truth and a lie was that the truth is something that actually happened and a lie is something you made up. T.H. did not remember being asked that question during her interview at April House. T.H. stated that she was telling the truth about the incident. The State rested.

¶ 16 The respondent's first witness was K.S., a 14-year-old high school freshman. K.S. testified that she and T.H. used to be best friends in fourth grade and stopped being friends around sixth grade. K.S. and T.H. would still talk from time to time. While the police investigation related to the instant case took place, K.S. and T.H. had a conversation in math class during which T.H. told K.S. that she did not like the respondent. K.S. asked T.H. why. K.S. explained:

> "[T.H.] said that because when they were dating or whatever they—[the respondent] wanted to do stuff like sexually and she said, no, and then so I guess she told me that they didn't and then said that her cousin still wanted to call the cops or whatever."

¶ 17 K.S. testified that T.H. told her not to tell anyone about their conversation because T.H. did not want to get into trouble. T.H. told K.S. that she did not do anything with the respondent. K.S. used to date the respondent in seventh and eighth grade when he was in high school. K.S. stopped dating the respondent at the end of eighth grade. K.S. did not have an opinion as to T.H.'s reputation for truthfulness.

¶ 18 During her own testimony, T.H. denied telling K.S. that nothing happened between her and the respondent. T.H. also denied telling K.S. that she lied because her cousin told her to.

¶ 19 Sade C. testified that she was a 14-year-old high school freshman. She knew the respondent through S.C. Sade C. used to be friends with T.H. T.H. told Sade C. about her relationship with the respondent in middle school. Counsel asked Sade C. if T.H. ever told her about a time when she and the respondent had sexual intercourse, and Sade C. responded, "I think but like they did stuff but like I don't remember like what." T.H. told Sade C. that she "did stuff" with the respondent when T.H. and Sade C. were in sixth or seventh grade. Sade C. did not remember talking to T.H. about the respondent after September 2012.

¶ 20 During her own testimony, T.H. stated that she told Sade C. that the respondent forced T.H. to have sexual intercourse with him.

¶ 21 S.C. testified that she was 14 years old and was a freshman in high school. S.C. met T.H. in elementary school and they used to be best friends. In contrast to T.H.'s testimony, S.C. testified that they stopped being friends in fifth grade—several years before the September 2012 incident between T.H. and the respondent. T.H. occasionally stayed at S.C.'s house when they were friends. The last time T.H. stayed at S.C.'s house was in fifth grade. S.C. still talked to T.H. occasionally at school. S.C. stated she never had a conversation with T.H. about the respondent after September 2012, and S.C. could not remember if she had a conversation with T.H. about the respondent before that. S.C. opined that T.H. was not very truthful.

¶ 22 The respondent testified that he was 17 years old and a junior in high school. The respondent had known T.H. since he was in middle school. The respondent met T.H. through S.C. The respondent had a dating relationship with T.H. for approximately one month the summer after he completed eighth grade when he was 14 years old and T.H. was 12 years old.

The respondent met T.H. in the park in September 2012 after an early school dismissal. After approximately 10 to 20 minutes, the respondent left the park and walked back to his house alone. The respondent never had sexual intercourse with T.H. and he never forced T.H. to do anything of a sexual nature. The respondent never did anything of a sexual nature with T.H., but they did hold hands while they were dating. The respondent never grabbed T.H.'s buttocks. The defense rested.

¶ 23 The trial court found the respondent guilty of both counts and adjudicated him delinquent. The trial court noted that count II was a lesser included offense of count I, and only entered judgment on count I. The trial court observed there were inconsistencies between T.H.'s interview at the child advocacy center and her courtroom testimony. The trial court reasoned that the courtroom is a difficult and stressful place for witnesses to testify, and is very different from a child advocacy center, which is designed to be a less stressful place for children. The court noted the inconsistencies between T.H.'s courtroom testimony and prior interview regarding: (1) T.H. giving different explanations of the difference between the truth and a lie; (2) why she was scared to tell anyone what happened; (3) whether her pants and boots were on or off; and (4) whether the respondent left the room to get a Ziploc bag to use as a condom. The court did not find the inconsistencies to be significant. The court reasoned that no one would have a perfect memory of events that occurred over two years ago and that it was human nature to have some inconsistencies. The trial court found T.H. to be more credible than the respondent on the issue of whether the respondent forced her to engage in sexual intercourse.

¶ 24 Following the dispositional hearing, the trial court ordered that the respondent be made a ward of the court and placed him on a 24-month term of probation.

¶ 25 ANALYSIS

¶ 26 On appeal, the respondent argues that the evidence at the adjudicatory hearing was insufficient to prove him guilty beyond a reasonable doubt of criminal sexual abuse as charged in count I because inconsistencies in T.H.'s testimony rendered her claim that she was forced to engage in sexual intercourse with the respondent doubtful. We agree.

¶ 27 When presented with a challenge to the sufficiency of the evidence, we ask whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *People v. Austin M.*, 2012 IL 111194, ¶ 107; *People v. Collins*, 106 Ill. 2d 237, 261 (1985). "The trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the trial court that saw and heard the witnesses." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 59. It is for the trier of fact to resolve conflicts or inconsistencies in the evidence. *Id.* While the trier of fact's decision to accept testimony is entitled to deference, it is neither conclusive nor binding on review. *Id.* The fact that a court accepted the truth of certain testimony does not guarantee its reasonableness. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004). Thus, "a conviction based upon testimony that is improbable, unconvincing, and contrary to human experience requires reversal." *People v. Vasquez*, 233 Ill. App. 3d 517, 527 (1992).

¶ 28 We find that the evidence at the adjudicatory hearing was insufficient to prove the respondent guilty of the use of force element of criminal sexual abuse as charged in count I. T.H. waited nearly a year after the incident to report it to the police, and there were many inconsistences between her initial video-recorded interview at the child advocacy center in September 5, 2013, and her testimony at the adjudicatory hearing in December of 2014. These

inconsistencies rendered her claim that she was forced to engage in sexual intercourse with the respondent doubtful.

¶ 29 First, in the video, T.H. said that the respondent inserted his penis inside her and then left the room to get a Ziploc bag to use as a condom. T.H. said that she remained in the bedroom when the respondent left because she was scared that he might be at the top of the stairs and yell at her to go back downstairs if she tried to leave. However, during her testimony at the adjudicatory hearing, T.H. did not mention the respondent leaving the bedroom to get the Ziploc bag. When she was asked about it on cross-examination, T.H. said she did not remember the respondent leaving or talking about him leaving in the video interview. It is unlikely that T.H. would forget the respondent interrupting sexual intercourse to find something to use as a condom, leaving her alone in the bedroom.

¶ 30 Second, there were extensive discrepancies in T.H.'s testimony at the adjudicatory hearing and her prior video-recorded interview regarding her state of undress during the incident. At the hearing T.H. said that her boots were never removed and her pants were around her ankles but not off. She subsequently stated at the hearing that she could not remember whether her pants were completely removed. During the video interview, on the other hand, T.H. said that her boots, pants, and underpants were completely removed during the incident and were placed on the floor. Additionally, during the video interview, T.H. said that she put her pants back on when the respondent went to get a Ziploc bag. However, T.H. became afraid when she heard the respondent coming back downstairs and put her pants on the floor where they had been before because she did not want the respondent to yell at her.

¶ 31 Third, T.H. said during the hearing that the respondent was wearing a shirt during the incident and she did not remember him removing it. However, during the video interview, T.H. said that the respondent was not wearing a shirt.

¶ 32 Fourth, during the hearing, when T.H. was asked why she went to S.K.'s house with the respondent after the incident, she said she did not know. However, during the video interview, T.H. said that she went to S.K.'s house because she was afraid that if she left right away, the respondent would think she was going to tell someone what had happened.

¶ 33 Due to the above inconsistencies, we find that T.H. was not a credible witness on the issue of force. While a reviewing court must allow all reasonable inferences in favor of the prosecution, a reviewing court may not allow unreasonable inferences in favor of the prosecution. *Cunningham*, 212 Ill. 2d at 280.

¶ 34 In coming to this conclusion, we note K.S.'s testimony that T.H. allegedly told her that nothing happened between T.H. and the respondent and that T.H. lied about the incident because her cousin told her to. We also cite S.C.'s testimony that T.H. was not a very truthful person. Such an opinion is bolstered by T.H.'s statements during the video-recorded interview where she stated that the difference between a truth and a lie was that the truth has more details than a lie.

¶ 35 We find the instant case to be analogous to our previous decision in *People v. Cowan*, 209 Ill. App. 3d 994 (1991). In *Cowan*, the defendant was convicted of battery. *Id.* at 997. The information alleged that the defendant fondled the victim's breasts, buttocks, and thighs without her consent. *Id*. At trial, the victim testified that the assault occurred in a bedroom and the defendant held her down while another man inserted his fingers into her vagina. *Id.* at 995. The victim testified that both the defendant and the other man touched her breasts, but the defendant did not touch her vagina. *Id.* However, a police officer testified that when he interviewed the

victim the day after the attack, the victim said that she initially permitted defendant and the other man to fondle her breasts and vaginal area over her clothes but then decided not to participate any further. *Id.* at 996. The victim also said that the assault occurred in the kitchen and both men inserted their fingers into her vagina. *Id.* On review, we found that due to the numerous inconsistencies between the victim's statement to the police and her trial testimony, a reasonable doubt existed as to the defendant's guilt. *Id.* at 997.

¶ 36 As in *Cowan*, numerous inconsistencies exist in this case between T.H.'s interview at the child advocacy center and her testimony at the adjudicatory hearing. Consequently, we find that a reasonable doubt existed as to the respondent's guilt on the use of force element of criminal sexual abuse as charged in count I (720 ILCS 5/11-1.50(a)(1) (West 2012)).

¶ 37 CONCLUSION

¶ 38 We reverse the judgment of the circuit court of Whiteside County finding the respondent guilty of criminal sexual abuse as charged in count I (720 ILCS 5/11-1.50(a)(1) (West 2012)) and remand the matter for further proceedings.

¶ 39 Reversed and remanded for further proceedings.