2016 IL App (1st) 160131-U

SECOND DIVISION
Modified upon denial of rehearing
July 19, 2016

No. 16-0131

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

IN THE INTEREST OF Allante V., a minor,	)	Appeal from the Circuit Court
	)	of Cook County.
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	
	)	No. 14 JD 3596
v.	)	
	)	
Allante V.,	)	
	)	Honorable William Gamboney
Respondent-Appellant.)	)	Judge Presiding

JUSTICE SIMON delivered the judgment of the court.
Presiding Justice Pierce and Justice Hyman concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in finding respondent guilty of criminal sexual assault when the State proved beyond a reasonable doubt each element of the offense. The trial court did not err when it admitted into evidence testimony of a prior consistent statement under the excited utterance exception.

¶ 2 This appeal is taken from a finding of delinquency in a sexual assault case. Respondent Allante V. was found guilty and sentenced to five years probation. He now argues that he should not have been found guilty because: there was insufficient evidence to prove his guilt beyond a

reasonable doubt and the trial court misapprehended the evidence; the trial court improperly admitted hearsay evidence; and his trial counsel was ineffective. Respondent also argues that certain applicable provisions of the Illinois Sex Offender Registration Act (730 ILCS 105/1 *et seq*.) are unconstitutional for a number of reasons, including that they violate his right to due process. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On September 16, 2014, after school let out, four high school students walked to respondent's apartment building. Respondent and one of the girls, complainant T.H., went inside respondent's apartment. The two other individuals, Randy P. and Devona M., remained in the building's hallway. Once inside the apartment, T.H. and respondent went into respondent's bedroom. T.H. testified that respondent closed the door and said that they should have sex. T.H. was sitting on the bed, which was a mattress on the floor. T.H. testified that she said "no" and began to get up from her seated position, but respondent pushed her back down. T.H. stated that respondent held her down with one arm while he used his other arm to unbuckle his pants and her pants and then inserted his penis in her vagina as she tried to free herself, breaking a fake fingernail in the process. T.H. testified that some time after penetration, she began bleeding from her vagina at which time respondent said "sorry," and allowed her to get up and leave. T.H. was 14 years old at the time and respondent was 15. They were in the apartment together for 20-30 minutes.

¶ 5 Randy P., a good friend of respondent, testified that when T.H. left the apartment, she walked to the train station with him and Devona M. who had remained in the hallway. Randy P. testified that T.H. was whispering with Devona M. and smiling. Devona testified that she and

T.H. were friends, while T.H. testified that they were not. Randy stated that T.H. was not crying and did not seem sad or any different than she acted on the way to the apartment. T.H. then took the train home, which was about three stops from the train station near respondent's apartment. T.H., to the contrary, testified that she left the apartment alone, did not walk to the train with anyone, and was in complete shock when she left.

¶ 6 When T.H. got home, her mother asked her where she had been. T.H. replied that she had been at the library. T.H. went straight to her bedroom and she was followed by her niece, Chepriah. T.H. testified that Chepriah was repeatedly asking her if everything was okay. After asking what was wrong several times, T.H., crying, told Chepriah "the whole thing." T.H., however, directed Chepriah to not tell anyone. However, Chepriah apparently told T.H. that she would not comply with that directive so T.H. called her father and told him what had occurred. While this was ongoing, Chepriah told T.H.'s mother what happened. T.H.'s mother called 911 and an ambulance came and took T.H. to the hospital where a rape kit was administered.

¶ 7 T.H. spoke with police while she was at the hospital. One of the things she told police was that respondent put on a condom, but at trial she could not remember. T.H. testified that while she was struggling to get free from respondent, she broke off fake fingernails causing her to bleed. None of the detectives or police officers saw any cuts, bruises, or blood on T.H. when they examined her. One of the detectives specifically checked T.H.'s hands and did not notice any injuries. There was no physical evidence offered, such as blood from T.H.'s underwear or respondent's sheets.

¶ 8 The trial court permitted Chepriah to testify about the statement T.H. made to her when she returned home that day. Chepriah testified that the two of them were close and would

usually laugh and be happy together but on that day T.H. just looked at the floor and did not say anything. Chepriah, though, knew something was wrong because of T.H.'s demeanor and kept asking her what happened. Chepriah recounted the narrative T.H. had given in a manner consistent with that set forth above. The trial court ruled that the testimony was admissible because T.H.'s statement was an excited utterance or a prompt complaint of sexual assault.

¶ 9 The trial court found respondent guilty of sexual assault and unlawful restraint. The judge found T.H. to be "credible, believable, articulate, certain in her testimony." The judge stated that he "didn't really believe [Randy] at all," but commented, "I believe the niece," referring to Chepriah's testimony, and added that "the outcry was prompt" and "consistent with one who had been sexually assaulted."

¶ 10 In a motion to reconsider, respondent was prepared to offer evidence that T.H. had conversations with Randy P. on Facebook. Respondent had probed the Facebook issue at trial with Randy testifying that he had conversations with T.H., but T.H. denied that. Respondent wanted to offer the messages to demonstrate that T.H. discussed using drugs, meeting up after school, and having sex, among other things—evidence that might rebut T.H.'s testimony that she was unfamiliar with Randy and the others prior to the time of the alleged assault. The court denied the motion to reconsider and later sentenced respondent to five years probation. Respondent appeals.

¶ 11 ANALYSIS

¶ 12 I. Sufficiency of the Evidence

¶ 13 Respondent interposes several arguments as to why he is entitled to appellate relief. He argues first that the evidence was insufficient to prove him guilty of criminal sexual assault.

Respondent contends that T.H.'s testimony was implausible and unbelievable when her testimony was not corroborated by any physical, medical or photographic evidence. Respondent also argues that T.H.'s testimony was incredible and was refuted by the testimony of Randy and Devona.

¶ 14 When considering a challenge to the sufficiency of evidence, a reviewing court applies a reasonable doubt standard. *In re Jonathon C.B.*, 2011 IL 107750, ¶ 47 (2011) citing *People v. Campbell*, 146 Ill. 2d 363, 374 (1992). The reasonable doubt standard applies in delinquency proceedings, requiring the State to prove the elements of the substantive offenses alleged in the delinquency petitions beyond a reasonable doubt. *In re W.C.*, 167 Ill. 2d 307, 336 (1995). The reasonable doubt standard asks whether, 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 beyond a reasonable doubt. *Id*. This court will not retry a defendant when considering a sufficiency of the evidence challenge. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007).

¶ 15 With the foregoing principles in mind, we find that, viewing the evidence in a light most favorable to the State, a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. The elements of criminal sexual assault are set forth in section 12–13(a)(1) of the Criminal Code of 1961 (720 ILCS 5/12–13(a)(1) (West 2012)). That section provides:

> "(a) The accused commits criminal sexual assault if he or she:
>
> (1) commits an act of sexual penetration by the use of force or threat of force * * *."
>
> 720 ILCS 5/12–13(a)(1) (West 2012)."

¶ 16 Here, the State presented evidence that satisfies each element of the crime. T.H., a 14-

year-old high school freshman, testified that she agreed to walk with respondent, who she believed to be a "cool" junior, because she did not feel safe that afternoon after school ended. As they walked, respondent suggested that they stop by his house on the way. Although she had never been there before, it was only about a block from her train, so T.H agreed. T.H. was aware that another pair of students, Devona and Randy were walking slightly behind them. At the apartment, respondent opened the back door and they went into his room. There, while standing in front of his bedroom door, respondent announced that they would have sex. T.H. testified that she said "no" and began to get up but respondent pushed her back down and came onto her. T.H. tried to push him off. T.H. testified that respondent held her down with his arms and unbuckled his pants. T.H. struggled to push him away; her fingernails broke and bled as she tried to fight him off. Respondent pinned T.H.'s hands to the bed and then inserted his penis into her vagina while she unsuccessfully tried to move and close her legs. T.H. felt pain in her vagina, but respondent kept rocking back and forth until he saw blood and got "scared." Respondent then apologized before letting her go.

¶ 17 Respondent claims that there were several inconsistencies in T.H.'s testimony that undermined her credibility. Specifically, respondent indicates that T.H.'s account of events was inconsistent as to whether he wore a condom or that she had a belt, or whether he could have gotten her pants down, and whether T.H. was friends on Facebook with Randy. Respondent also claims that the testimony of Devona and Randy who both stated that it was consensual sex rebuts the victim's testimony. However, 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. *People v. Wheeler*, 226 Ill. 2d 92at 114-15. It also is for the trier of fact to

resolve conflicts or inconsistencies in the evidence. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002).

¶ 18 Here, the trial court, as the trier of fact, had the opportunity to observe the witnesses and found that T.H.'s testimony was credible. The court noted that both Randy and Devona did not see anything that took place inside the apartment. The court held that Randy's testimony was not credible "based on his demeanor and the manner of testifying." Similarly, the court indicated that it could not consider Devona's testimony and instead found T.H.'s version of events credible. We will not disturb the trial court's credibility determinations and we will not reverse defendant's conviction for criminal sexual assault " 'simply because the defendant tells us that a witness was not credible.' " See *People v. Brown*, 185 Ill. 2d 229, 250 (1998) (quoting *People v. Byron*, 164 Ill. 2d 279, 299 (1995)).

¶ 19 The court found that force was present and also noted that there was a "disparity in size" between respondent and T.H. although it later clarified that the disparity was "not substantial." Ultimately, while there were some inconsistencies, the positive testimony of a single credible witness is sufficient to convict even though it was contradicted in some part by respondent's witnesses. See *People v. Artherton*, 406 Ill. App. 3d 598, 610 (despite some inconsistencies, 11-year-old's testimony of sexual penetration was sufficient to satisfy all the elements of predatory criminal sexual assault). Here, in addition to the T.H's testimony, the court also found that the outcry to Chepriah was credible and consistent with a sexual assault. Therefore, based on the entire evidence presented at trial, we find that the trial court did not err in finding respondent guilty of criminal sexual assault.

¶ 20 Regarding defendant's claim that there was no physical evidence introduced, we note that

T.H.'s testimony did not require corroborative evidence and that respondent's convictions could be sustained on a victim's credible testimony alone. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Accordingly, we reject respondent's claims that the trial court misapprehended the evidence at trial and that the State failed to prove his guilt beyond a reasonable doubt.

¶ 21 II. Excited Utterance Testimony

¶ 22 We will focus next on respondent's argument that the trial court improperly admitted and relied upon the testimony of T.H.'s cousin, Chepriah, to arrive at its judgment. When respondent objected to the introduction of this testimony, the trial court acknowledged the general rule in Illinois "that the testimony of a witness cannot be bolstered or supported by showing that a witness has made similar statements out of court in harmony with his testimony on the witness stand." (Reading from *People v. Harris*, 134 Ill. App. 3d 705, 713 (1985)). The court continued, "Exceptions to this rule have been made where the declarant makes a spontaneous declaration and in rape cases where a prompt complaint of rape is made." (Internal citations omitted). *Id.* The trial court then expressed its finding that "this sounds fairly prompt to me" and that "I think it applies to the prompt complaint of rape." In response to a request for clarification from defense counsel about whether the testimony was being allowed as a spontaneous declaration or a prompt complaint, the court clarified that it was "going to allow it under both."

¶ 23 A statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition is not excluded by the hearsay rule even though the declarant is available as a witness. Ill. R. Evid. 803(2) (eff. Jan. 1, 2011). For a statement to be admissible under the spontaneous declaration exception, (1) there must be an occurrence sufficiently startling to produce a spontaneous and unreflecting statement, (2) there

must be an absence of time for the declarant to fabricate the statement, and (3) the statement must relate to the circumstances of the occurrence. *People v. Sutton*, 233 Ill. 2d 89, 107 (2009). In determining whether a hearsay statement is admissible under the spontaneous declaration exception, courts employ a totality of the circumstances analysis, considering factors that include time, the nature of the event, the mental and physical condition of the declarant, and the presence or absence of self-interest. *Id*. The admission of evidence is within the sound discretion of the trial court, and its ruling should not be reversed absent a clear showing of abuse of that discretion. *People v. DeSomer*, 2013 IL App (2d) 110663, ¶ 12.

¶ 24 Undoubtedly, rape would qualify as a sufficiently startling occurrence for purposes of the excited utterance exception. Respondent concedes that a sexual assault is a startling event and that Chepriah's testimony related to the circumstances of the sexual assault but argues that the passage of time was too long to qualify for the exception. However, our courts have recognized that the period of time that may pass without affecting the admissibility of a statement under the spontaneous declaration exception varies greatly. See *People v. Williams*, 193 Ill. 2d 306, 353 (2000). So, sometimes many hours will pass and the statement will be admissible and sometimes mere minutes will pass and the statement will be inadmissible. *Id*.

¶ 25 Here, the trial court found that the statement was sufficiently prompt to permit admission as either a spontaneous declaration or prompt complaint. The court held that the only delay was approximately 15-30 minute travel period to home before T.H. told Chepriah what happened. Although there is no direct testimony of the exact amount of time between the alleged assault and the statement being made to Chepriah, the evidence seems to indicate that somewhere

between 30 minutes and an hour and a half is roughly correct.[1] Based on this amount of time, we cannot say that that the trial court abused its discretion in finding that there was an absence of time to fabricate between the assault and T.H.'s outcry to Chepriah.

¶ 26 Respondent also contends that the statement to Chepriah was not spontaneous because T.H. only made the statement in response to repeated questioning from her niece. Chepriah testified that she asked T.H. what was wrong "at least ten or close to [ten]" times. But the fact that a statement was made in response to a question does not automatically negate the statement's spontaneity. *People v. Sommerville*, 193 Ill. App. 3d 161, 174 (1990). Moreover, T.H.'s father was told immediately and her mother called the police. In addition, both Chepriah and T.H. testified at trial and were cross examined thereby eliminating concern about the application of the hearsay rule. See *People v. Bryant*, 391 Ill. App. 3d 1072, 1083 (2009). Based on the totality of the circumstances, we find that the trial court did not abuse its discretion when finding that T.H.'s statement to Chepriah was a spontaneous assertion of what occurred.

¶ 27 The trial court also indicated that it was admitting the testimony as a prompt complaint of rape—the other exception for allowing bolstering testimony. See *Harris*, 134 Ill. App. 3d at 713. But the prompt complaint exception is limited. "Since the sole purpose of the [prompt complaint] exception is to rebut any presumption which might arise from the complainant's silence, *only the fact of the complaint is admissible*; neither the details of the complaint nor the identity of the named perpetrator is admissible." *People v. Gray*, 209 Ill. App. 3d 407, 417 (1991) (emphasis added). Here, the trial court permitted Chepriah to testify about all of the facts relayed to her by T.H. Although the substance of the testimony about what happened between

[1] The evidence shows that school let out at 3:15 p.m. The testifying police officer stated that she was dispatched to T.H.'s home in response to a 911 call at approximately 5:35 p.m.

T.H. and respondent should not have been allowed under the prompt complaint exception, it was properly admitted under the excited utterance exception as previously established. Therefore, in light of the fact that the substance of the testimony was admissible as an exception to the hearsay rule, the trial court's determination that it can also be admitted under the prompt complaint rule was a harmless error.

¶ 28 III. *Krankel* Hearing

¶ 29 Respondent argues that the trial court failed to conduct a preliminary inquiry as required by *People v. Krankel*, 102 Ill. 2d 181 (1984), when in the motion to reconsider, trial counsel admitted her ineffectiveness for failing to present some evidence, in the form of Facebook messages, that would have impeached T.H. According to respondent, those messages would have established that T.H. communicated with Randy on Facebook and could have been used as "proof" that T.H. lied when she said she did not previously have a relationship with Randy. Counsel argued that the Facebook messages were important because those messages would have lent support to the defense theory that the teenagers planned to go to respondent's house together.

¶ 30 In *People v. Krankel*, 102 Ill. 2d at 187-89, our supreme court concluded that the failure to appoint new counsel to argue a defendant's *pro se* posttrial motion alleging ineffective assistance of trial counsel was an error and remanded the cause for a new hearing on the claim. Although this case presents a different situation because counsel argued its own ineffectiveness, the same principles apply. *People v. Willis*, 2013 IL App (1st) 110233, ¶ 72. New counsel is not automatically required every time a defendant presents a *pro se* posttrial claim that his counsel was ineffective. *People v. Moore*, 207 Ill. 2d 68, 77 (2003). Instead, the trial court must examine the factual basis of the defendant's claim in order to determine whether new counsel

should be appointed. *Id*. at 77-78. During this evaluation, some interchange between the trial court and trial counsel regarding the facts and circumstances surrounding the allegedly ineffective representation is permissible and usually necessary in assessing what further action, if any, is warranted on a defendant's claim. *Moore*, 207 Ill. 2d at 78.

¶ 31 Because the adequacy of the trial court's inquiry into the allegations of ineffective assistance of counsel in light of *Krankel* is a matter of law, our review is *de novo. People v. Willis*, 2013 IL App (1st) 110233, ¶ 72.

¶ 32 Here, respondent's claim that the trial court did not conduct a proper preliminary hearing is rebutted by the record. Specifically, the trial court questioned respondent's counsel on how the proposed Facebook pages should be considered, and counsel argued that it was due to the lack of a postconviction procedure in cases involving juveniles or, in the alternative, an ineffectiveness claim. The trial court then questioned counsel whether Randy's testimony was consistent with what the Facebook messages inferred. Counsel responded that Randy testified that the two "communicated on Facebook," and insisted that defense should have introduced those messages during Randy's testimony. Ultimately, the trial court properly concluded that even if those messages would have been introduced, this proposed evidence did not say anything about respondent or a proposed plan to go to respondent's house after school and that the same evidence was introduced through Randy's testimony. In other words, the trial court did not find a proper basis for the ineffective assistance of counsel claim as defendant was not prejudiced by counsel's failure to introduce those messages at trial. See *Strickland v. Washington*, 466 U.S. 668, 694 (1984). Accordingly, we find that that the exchange between counsel and the trial court was a proper and sufficient inquiry into the factual basis of the counsel's ineffective assistance of

counsel claim. See *People v. McCarter*, 385 Ill. App. 3d 919, 941 (2008) ("there are instances where a brief discussion between the trial court and the defendant is sufficient for the trial court to properly deny an ineffective assistance claim").

¶ 33 We also reject defendant's argument that certain applicable provisions of the Illinois Sex Offender Registration Act (730 ILCS 105/1 *et seq*.) are unconstitutional. *In re J.W.*, 204 Ill. 2d 50, 66 (2003) (rejecting substantive due process challenge to the Illinois Sex Offender Registration Act); *People ex rel. Birkett v. Konetski*, 233 Ill. 2d 185, 206 (2009) (rejecting minor's procedural due process challenge to the Illinois Sex Offender Registration Act and holding that sex offender registration is not punishment but a "regulatory statute intended to foster public safety").

¶ 34 Finally, defendant argues and the State agrees that defendant's term of probation should be modified to terminate on defendant's twenty-first birthday, which is on March 31, 2020. The Juvenile Court Act of 1987 provides that all proceedings under the Act terminate automatically when the minor attains the age of 21 years. 705 ILCS 405/5–755 (West 2012); see also *In re Jaime P.*, 223 Ill. 2d 526, 539-40 (2006). Therefore, we modify defendant's term of probation to terminate on March 31, 2020.

CONCLUSION

¶ 35 Based on the foregoing, we affirm the judgment under review but modify the term of defendant's probation to terminate on March 31, 2020.

¶ 36 Affirmed as modified.