2017 IL App (1st) 150982-U

No. 1-15-0982

Order filed September 14, 2017

Fourth Division

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 2016
	)	
TORY TAYLOR,	)	Honorable
	)	Bridget J. Hughes,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McBride delivered the judgment of the court.
Presiding Justice Burke and Justice Gordon concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for criminal sexual assault affirmed over his contention that the State failed to prove beyond a reasonable doubt he knew the victim was unable to give knowing consent to his act of sexual penetration.

¶ 2 Following a bench trial, defendant Tory Taylor was convicted of one count of criminal sexual assault (720 ILCS 5/11-1.20(a)(2) (West 2014)) and sentenced to 11 years' imprisonment in the Illinois Department of Corrections. On appeal, defendant contends that the State failed to prove his guilt beyond a reasonable doubt. We affirm.

¶ 3 Defendant was charged with one count of criminal sexual assault in that he sexually penetrated the victim, O.H., by inserting his finger into her vagina knowing that she was unable to give knowing consent.

¶ 4 The evidence at trial showed that O.H. was 17 years old in January 2014. She was a high school student living with her parents in a northern suburb of Chicago. O.H. testified that, on January 3, 2014, she went for a one-hour massage at Body & Sol Salon in Barrington, Illinois. She had been to the salon three times before and had always received a massage from a female therapist. On this date, O.H. was assigned to defendant, whom she had never met before.

¶ 5 In the private massage room, O.H. undressed completely, including her underwear, and lay face down on the massage table with a sheet covering her body from the neck down. She asked defendant to focus the massage on her upper back. He began the massage by pulling the sheet down to just above O.H.'s buttocks. He massaged her upper back and shoulders and worked his way down near the sides of her back. O.H. testified that this portion of the massage seemed to be similar to massages she had received from the female therapists on prior occasions. However, defendant's fingers came closer to her breasts than was normal, near the portion of her breasts just below each armpit, but she "didn't think too much of it" at the time.

¶ 6 Defendant pulled the sheet up, right below O.H.'s buttocks, and massaged her legs, starting with her calves. O.H. thought this portion of the massage was normal until defendant reached her thighs and began massaging closer to her buttocks than was normal. Defendant used both hands, with nothing separating his hands from O.H.'s legs, and massaged the farthest-up point of her thigh, right underneath her buttocks, for approximately five to ten minutes. Defendant then moved his hands to O.H.'s inner thighs, closer to her vagina, with nothing

separating his hands from her thighs, and rubbed in this area for approximately five to ten minutes.

¶ 7 Defendant directed O.H. to flip over on the table, so that she was lying on her back. He placed the sheet over her and began to massage her shoulders, neck, and arms. He placed his hands underneath her lower back and pulled up, causing her to sit up partially. He pulled on her again, causing the sheet to fall below her breasts. Defendant massaged O.H.'s breasts for approximately five minutes while seated directly behind her. He then pulled the sheet completely off O.H. and asked her if there was anywhere she wanted him to focus on for the last ten minutes of the massage. O.H. responded that "anywhere [was] fine."

¶ 8 As O.H. was lying on her back, defendant began to massage her inner thighs. He spread her legs apart and proceeded to her vagina with nothing between his hands and her vagina. Defendant stuck his finger inside O.H.'s vagina while rubbing her breasts. He stuck his finger in and out of her vagina "at least 15" times, while saying nothing to her. As he was rubbing O.H.'s breasts, he asked, "can I bite one?" and O.H. responded, "what?" Defendant then asked, "can I lick one?" and O.H. responded, "no." Defendant stopped penetrating O.H. and rubbing her breasts, put the sheet back on her, and directed her to meet him in the lobby.

¶ 9 O.H. testified that she did not call out for help during the assault because she was "in shock" and "didn't know what to do." She did not believe something like this could ever happen and felt paralyzed. After defendant left the room, O.H. "kind of just sat there for a little bit," then put her clothes back on, and went into the lobby. Defendant was the only person there, standing with a bottle of water and his business card. O.H. took the water bottle, gave defendant her standard ten dollar tip, and left the salon.

¶ 10 O.H. drove home and called a guidance counselor, with whom she had a close relationship with, to tell what had happened. She next called her mother, who came home and took her to the Barrington Police Department. After speaking with the police, O.H. went to Advocate Condell Medical Center, where she underwent a sexual assault examination, during which vaginal swabs were taken.

¶ 11 Two other crimes witnesses testified to similar occurrences while receiving massages from defendant on prior occasions, in which defendant grabbed the breasts of one witness and repeatedly brushed against the vaginal area of the other witness. The parties stipulated to the testimony of several other witnesses, which established, *inter alia*, that defendant's DNA could not be excluded from having contributed to the mixed Y chromosome DNA profile identified from O.H.'s sexual assault examination.

¶ 12 The court denied defendant's motion for a directed finding.

¶ 13 Defendant testified that, on January 3, 2014, he performed a massage on O.H., in which he followed his usual protocol. While standing, he massaged her back for approximately 20 minutes and each arm for two and one half minutes. He denied ever moving his hands towards her breasts. Next, defendant massaged O.H.'s legs. He felt tension in her lower back and asked if he could give her "a little glute work" over the sheet, to which she replied, "yes." Defendant massaged O.H.'s buttocks over the sheet, and then moved up and down her legs for approximately ten minutes on each leg. He then asked O.H. to turn over to her back, sat down in a stool in front of her, and began to massage her neck and shoulders.

¶ 14 At this time, the sheet was draped over O.H.'s torso, with her arms over the sheet and to her sides. Defendant said he made sure the sheet was tightly draped with everything covered. He

finished the last 15 minutes of the massage with her neck, forehead, and temples. After massaging O.H.'s temples, defendant told her to take her time getting up and to come out of the room when she was ready, and walked out of the room. Defendant testified that when he saw O.H. in the lobby, she was not upset and she told him she was "feeling alright."

¶ 15 Defendant denied pushing O.H. into a sitting position, undraping the sheet over her breast area, and cupping or grabbing her breasts. He also denied moving his hands inside her thighs, touching her vagina, and inserting his finger into her vagina. Defendant denied receiving any client information that would have revealed O.H.'s age and stated that he presumed she was of age and had gone through the proper intake procedures because she was assigned to him.

¶ 16 Defendant again unsuccessfully moved for a directed finding, arguing that there was insufficient evidence for the court to make a determination that defendant knowingly committed an act of sexual penetration on O.H. knowing that she was unable to give knowing consent. The court found defendant guilty of criminal sexual assault.

¶ 17 The court found O.H. to be "very credible," "more credible than the defendant." It stated O.H. was a young, 17-year-old girl who was naive and inexperienced. She was in a very vulnerable position and the acts were done against her will. She did not have the life experience or strength to tell defendant to stop once he began touching her inappropriately. She was shocked and scared, and just because she consented to a massage, did not mean she consented to the sexual act.

¶ 18 The court denied defendant's motion for a new trial. It did not find it surprising or incredible that O.H. behaved in the way she did when the assault happened because she was still a minor. She did not scream or get up to run away due to her naiveté, where she was alone and

naked, with the older, “much stronger and bigger” defendant standing over her. The court concluded: “you cannot consent to those kinds of acts in that when you’re getting a massage and the massage therapist [is] in the room and the allegation [is] that he stuck his finger in her vagina, you cannot consent to that.” Defendant was sentenced to 11 years’ in prison.

¶ 19 On appeal, defendant argues the evidence was not sufficient to find him guilty of criminal sexual assault. Specifically, he argues the State failed to provide any evidence supporting that defendant knew O.H. was unable to give knowing consent.

¶ 20 Defendant asserts that the facts are not in dispute and we should review his case *de novo*. See *People v. Smith*, 191 Ill. 2d 408, 411-13 (2000) (review was *de novo* where undisputed facts showed the defendant committed the offense of armed violence within the meaning of the armed violence statute). We disagree. Although the facts are not disputed, inferences from those facts are, as defendant disputes whether the evidence presented sufficiently proved the elements of criminal sexual assault. Accordingly, we reject defendant’s assertion.

¶ 21 The standard of review when challenging the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *People v. Brown,* 2013 IL 114196, ¶ 48. The reviewing court will not substitute its judgment for that of the trier of fact on issues pertaining to the credibility of witnesses or to the weight of the evidence. *Id.* Circumstantial evidence is sufficient to sustain a conviction, provided that the elements of the crime charged are proven beyond a reasonable doubt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000).

¶ 22 The trier of fact need not be satisfied beyond a reasonable doubt as to each link in the chain of circumstances. *Id.* It is sufficient if all the evidence taken together proves the

defendant's guilt beyond a reasonable doubt to the fact finder's satisfaction. *Id.* Additionally, the trier of fact is not required to disregard inferences that normally flow from the evidence or to seek out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009). Despite this deference, a conviction will be reversed if the evidence is so improbable or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

¶ 23 To sustain defendant's conviction for criminal sexual assault as charged, the State had to prove that defendant sexually penetrated O.H. by inserting his finger into her vagina knowing that she was unable to give knowing consent. 720 ILCS 5/11-1.20(a)(2) (West 2014). On appeal, defendant does not contest that he sexually penetrated O.H. with his finger. Rather, he argues the evidence was insufficient to prove he did so knowing that O.H. was unable to give knowing consent because the State offered no evidence whatsoever that he had knowledge of O.H.'s state of mind or that called into question her ability to consent.

¶ 24 A defendant's "knowledge" is defined as:

> "The nature of attendant circumstances of his or her conduct, described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist. Knowledge of a material fact includes awareness of substantial probability that the fact exists." 720 ILCS 5/4-5(a) (West 2014).

¶ 25 The proper inquiry in a prosecution under section 11-1.20(a)(2) must be determined by looking at the defendant's particular knowledge of the victim's ability to give knowing consent and must be determined by looking at the unique facts of an individual case. See *People v. Lloyd*, 2013 IL 113510, ¶ 33; *Whitten*, 269 Ill. App. 3d at 1042 (the focus is on what the defendant

knew or should have known pertaining to the victim's willingness or ability to give knowing consent). If a defendant knows or has reason to know a victim cannot give consent to a sexual act, he should refrain from engaging in any sexual contact with the victim. *Id.* at 1043. Knowing consent "presupposes an intelligence capable of understanding the act, its nature and possible consequences." *People v. Quinlan*, 231 Ill. App. 3d 21, 25 (1992).

¶ 26 The evidence viewed in the light most favorable to the State was sufficient to prove defendant's guilt beyond a reasonable doubt. As did the trial court, we find *People v. Quinlan*, 231 Ill. App. 3d 21 (1992), to be persuasive. In *Quinlan*, the victim was admitted to the hospital for pneumonia. As part of her "treatment," the defendant, a respiratory therapist, told her she needed an invasive vaginal and rectal medical examination to determine if she was "neurologically intact." The victim agreed to the "examination," which the defendant then performed. But, no such medical examination actually existed, and defendant was convicted of criminal sexual assault. The defendant argued that the victim was an intelligent, educated woman who understood the proposed acts and knowingly consented to them. The *Quinlan* court disagreed, stating:

> "Even though [the victim] is an intelligent, educated woman, she is not a doctor or a trained respiratory therapist. She had no way of knowing that the proposed examination was not a legitimate medical test, but relied on the medical professional who was assigned to her case in a reputable hospital. [The victim] consented to an invasive medical procedure, not to sexual acts. Since defendant's acts were not a medical procedure, the evidence proved beyond a reasonable doubt that [the victim] did not

understand the nature of the acts and did not give knowing consent." *Quinlan*, 231 Ill. App. 3d at 31.

¶ 27 The same logic applies here. O.H. consented to a legitimate, professional massage, not to the sex acts that were done to her. She had no way of knowing that the proposed massage was not going to be a legitimate massage, but rather sexual acts. She relied on defendant's expertise as a massage therapist to conduct her massage in a legitimate, professional manner and did not understand the nature of the acts such that she could give knowing consent to any sexual acts. And defendant knew O.H. was unable to give knowing consent, "because he did not give her advance warning, or an opportunity to consent, and the deed was swiftly done." *People v. Burpo*, 164 Ill. 2d 261, 270 (1995) (Freeman, J., concurring) (in the context of a physician who performs a vaginal examination as a sex act, not for the medical reasons to which the victim had consented).

¶ 28 We also find *People v. Deenadayalu*, 331 Ill. App. 3d 442 (2002), to be persuasive. In *Deenadayalu*, the defendant was the victim's treating physician. After the victim explained her headache symptoms, the defendant put his hand under her shirt from behind and rubbed her neck. He moved his hand down her back, placed it in the waistband of her pants, and felt the crack of her buttocks. He pressed his body against the victim's knee, where she could feel his erect penis against her, attempted to pry her legs open, and "smelled all the way up" to her head. Defendant was convicted of criminal sexual abuse, in that he committed "an act of sexual conduct and the accused knew that the victim was unable to understand the nature of the act or was unable to give knowing consent." *Deenadayalu*, 331 Ill. App. 3d at 450.

¶ 29 On appeal, the defendant did not dispute the sexual contact, but unsuccessfully argued that the State did not prove the victim was unable to consent to the sexual conduct. He argued the victim had an obligation to tell him to stop the offensive touching if she did not want him to continue. *Deenadayalu*, 331 Ill. App. 3d at 450-51. He claimed she was put "on notice" that something was wrong when she felt his hands progressing down her back and touching her buttocks, and, at that point, should have refused consent. The *Deenadayalu* court found:

> "There was nothing in this case to suggest that the victim should have questioned the nature of the defendant's initial behavior or suspect[sic] that sexual conduct was to follow. * * * Although perhaps the victim might have started to question the defendant's conduct when he touched her buttocks, we do not believe that a patient would necessarily be put on notice that an assault was about to occur. Therefore, * * * , we do not believe that the victim in this case was put on notice of the defendant's intentions until he committed the charged act of sexual conduct * * *. Accordingly, we conclude that the evidence supported the trial court's finding that the victim was unable to consent to the defendant's conduct." *Deenadayalu*, 331 Ill. App. 3d at 452.

¶ 30 Similarly, in this case, defendant knew that O.H. was unable to consent to the sexual acts that occurred. O.H. consented to receiving a massage and did not request that defendant touch her in any other manner. Defendant began the massage by rubbing O.H.'s back and shoulders in an appropriate manner, yet he tactically moved his fingers ever close to her breasts. He rubbed both hands up and down O.H.'s legs, which was normal, but also began to rub close to her buttocks. Defendant shifted between appropriate and inappropriate contact as he moved his hands towards her inner thighs, near her vagina. As the massage advanced, defendant pulled up

on O.H. twice, causing the sheet to fall and expose her naked breasts. He massaged her naked breasts then removed the sheet entirely, massaged her inner thighs, touched her vagina, and then penetrated it with his finger.

¶ 31 There was nothing to suggest that sexual contact would follow from defendant's seemingly normal massage. O.H. may have started to question defendant's conduct when he touched her breasts or buttocks, but she certainly was not put "on notice" that a sexual assault was going to occur. O.H. was unable to consent to something she had no reason to expect, and defendant had reason to know that she would be unable to give knowing consent. In making this finding, we reject defendant's contention that O.H. was able to consent because she was "alert and aware" of his actions and did not tell him to stop or did not call for help. As in *Quinlan* and *Deenadayalu*, we find that the victim, O.H., was unable to consent to defendant's sexual actions, and defendant knew that she was unable to consent. See *Burpo*, 164 Ill. 2d at 270 (Freeman, J., concurring).

¶ 32 Viewing all the evidence in the light most favorable to the State, we find the evidence was sufficient for a rational trier of fact to find defendant guilty of criminal sexual assault beyond a reasonable doubt.

¶ 33 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 34 Affirmed.