2018 IL App (4th) 170523-U

NO. 4-17-0523

FILED
June 11, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
BRIAN WOOD,	)	No. 14CF63
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Harris and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The evidence was sufficient to prove defendant guilty beyond a reasonable doubt of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2012)) and aggravated criminal sexual abuse (720 ILCS 5/11-1.60(f) (West 2012)).

(2) The trial court did not abuse its discretion by sentencing defendant to 10 years in prison upon his conviction of predatory criminal sexual assault of a child and 4 years in prison upon his conviction of aggravated criminal sexual abuse.

¶ 2 Defendant, Brian Wood, appeals his convictions of predatory criminal sexual assault of a child and aggravated criminal sexual abuse, for which the trial court sentenced him to consecutive terms of 10 and 4 years' imprisonment, respectively. He makes two arguments. First, he challenges the sufficiency of the evidence for both offenses. Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could find, beyond a reasonable doubt, the disputed elements of each offense. Second, defendant challenges

his sentences as excessive. Finding the trial court gave careful consideration to all relevant factors, we find no abuse of discretion. Therefore, we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant with predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2012)) (count I) and aggravated criminal sexual abuse (720 ILCS 5/11-1.60(f) (West 2012)) (count II), both offenses involving his minor stepdaughters. Count I alleged that sometime in May and/or June 2013, defendant committed an act of sexual penetration against K.R., age 11, when defendant knowingly placed his finger in K.R.'s vagina. Count II alleged that in September 2012, defendant committed an act of sexual conduct against A.R., age 15, when he knowingly touched A.R.'s vagina.

¶ 5 At the bench trial, which took place over the course of three hearing dates between July and November 2016, the State presented the testimony of Livingston County sheriff's deputy Ryan Bohm. Bohm, a detective, testified his investigation of the case began upon Karen Wood's complaint on March 11, 2014. Wood, n/k/a Karen Zimmer, was the mother of both victims and, at the time, was defendant's wife. The Illinois Department of Children and Family Services was notified, and both victims were interviewed at the Livingston County Child Advocacy Center (CAC) on March 12, 2014.

¶ 6 Ellen Joann Sipes, a forensic interviewer with CAC, testified she conducted those interviews. She said, as common practice, the interviews were audio- and video-recorded.

¶ 7 The victim, K.R., testified that she was then 14 years old. She explained that one night two to three years ago, she and defendant, her former stepfather, were watching television in the living room. She was sitting in the recliner, and defendant was sitting on the couch. The two pieces of furniture were close enough that one sitting on the couch could reach over and

touch the person sitting in the recliner, which according to K.R. is exactly what defendant did. She said "[h]e reached over and put his hands down [her] pants." His hand went underneath her pants and underwear. He put his finger inside her vagina. She said this made her feel scared and she told him to stop, which he did. K.R. said that, later that evening, defendant told her not to tell anyone because it would ruin his relationship with her mother. K.R. said she could not remember exactly when this happened, how many times his finger went inside, or how it felt. She said she told her mother about the incident in March 2014 when her mother asked if she had ever been touched inappropriately.

¶ 8 Next, the victim A.R., who was at the time of trial almost 19 years old, testified. She explained that between 2010 and 2012, she, her sister, her brother, and her mom lived with defendant, her then-stepfather, and his daughters in his house in Cullom. One evening in the summer of 2012, the family was watching a movie in the living room. A.R. was sitting on the couch with defendant at the opposite end. A.R. was wearing shorts and a T-shirt. Defendant announced he was cold, so he moved closer to A.R. to share her blanket. He put his head on A.R.'s left hip, his left hand on her thigh, and his right hand between her legs. While under the blanket, defendant moved his hand slowly up A.R.'s leg and over her shorts to her vaginal area. He moved his fingertips in an up-and-down motion on her vaginal area. Defendant stopped when A.R. announced she was no longer cold and removed the blanket. Defendant took the blanket and sat upright on the couch. A.R. testified that, rather than leave the room, she continued to watch the movie in order to process what had just happened. She also wanted to avoid questions from family members about why she was leaving the movie early.

¶ 9 A few days after the incident, defendant told A.R. not to mention it to anyone because he feared it would ruin his marriage. A.R. said there were several subsequent incidents

with defendant about which she felt uncomfortable. One such incident occurred on defendant's November 2012 birthday. A.R. and defendant's daughter Jennifer were playing a board game. Jennifer playfully hit A.R. in the chest. A few moments later, A.R. left the table to get something from the kitchen. Defendant followed her, asking if he could check her chest for bruises. He pulled down on her shirt and bra saying " 'Let me see, let me see, it's my birthday, give me a gift.' "

¶ 10 A.R. testified that, on multiple occasions between June and November 2012, defendant would enter the bathroom while A.R. was showering. He would open the curtain. A.R. would turn to face him while trying to cover her body. He would then appear at the other end of the curtain. She would again turn to face him while trying to cover her body. Defendant would say things like " 'Oh, just let me see, you are so beautiful, don't be ashamed of your body.' "

¶ 11 Sometime between the "couch incident" and the "birthday incident," defendant called A.R. into his bedroom to talk. He closed the door. Defendant told her he would never "take her virginity[,]" but if she ever "came on" to him, he would not be able to control himself. A.R. said she told her mother about the "couch incident" sometime in the early part of 2013.

¶ 12 On cross-examination, A.R. explained the circumstances surrounding her reveal of the abuse to her mother. Defendant had asked A.R. to go shopping with him, and A.R. declined. Defendant said, in front of Zimmer, that " 'no one likes [him].' " Zimmer said to A.R.: " 'Why don't you just go with him? Just suck it up and go with him.' " A.R. said that was when she "decided [she] should probably tell her why [she] didn't want to go with him." A.R. admitted she continued to be around defendant, smile at him, give him hugs, and help him with his race car. She said she was uncomfortable, but she tried not to think about it. She said: "[T]hat way

everything could still, I guess, work as a family." A.R. admitted telling Tammy Moore, her then-boyfriend's mother, that defendant was more of a father to her than her biological father.

¶ 13 A.R. explained that the family remained together for approximately one year after she had told Zimmer about the abuse in March 2013. Shortly before they left the home in February 2014, A.R. had asked to move to Pontiac so she could continue her cosmetology course. Her current high school was no longer providing bus service to the vocational school. Defendant told her no, which admittedly upset her. Although she denied being excited about leaving the home, she admitted she was not happy at her current school and was "hoping for the new start."

¶ 14 A.R. said defendant had told Zimmer that his behavior with A.R. was due to medication he had been taking. He said he " 'didn't know what he was doing.' " A.R. believed him, so when Zimmer asked if she wanted to leave the home, A.R. said no initially because she "didn't want to have to start over." But A.R. told her mother she did not want the "same thing" to happen to her sister. Zimmer told A.R. " 'that wouldn't be a problem because it was just the medicine he was on.' " However, when K.R. revealed the abuse to her mother on February 24, 2014, they immediately left that night.

¶ 15 Karen Zimmer testified she married defendant on April 7, 2012, and moved her family into his home in Cullom. They left suddenly (at approximately 10 p.m.) in February 2014 after her conversation with K.R. Zimmer had asked K.R. if she had ever been touched inappropriately. Zimmer said K.R. looked away and said " 'I can't tell you.' " Zimmer asked her why. K.R. said " 'if I tell you, you'll leave.' " Nevertheless, with Zimmer's persistence, K.R. told of the "couch incident." According to Zimmer, K.R. described it as follows:

> "She said that she was sitting in the recliner chair, and he was sitting on the couch next to her and that he reached over and that he, she said not the hole that I pee out of, not the hole that I poop out of, but the hole in the middle, he put his finger in there."

Zimmer said K.R. told her defendant stopped when she told him it hurt. Zimmer confronted defendant, but he denied it. Zimmer stated: "He told me, 'I told you after the last time what happened with [A.R.] that it would never happen again and it didn't happen.' "

¶ 16 On cross-examination, Zimmer said defendant admitted to her he had touched A.R. inappropriately. Zimmer also said that, although K.R. could not remember the date when the abuse occurred, K.R. believed it may have been during a snowstorm in January 2014.

¶ 17 The State played a redacted version of K.R.'s videotaped March 12, 2014, interview with Sipes at CAC. In that interview, K.R. stated she was then 11 years old. She said she and defendant were watching television one night "this year" when he started touching her. She thought it was during the school year, but she could not recall the month. She was sitting in the recliner, and defendant was sitting on the couch. She said defendant put his hand inside her pants and underwear and put his finger inside her. She did not know the name of her body parts, but she said it was underneath the "pee hole." She said his finger went in and out of "the hole." She said she indicated it hurt, and defendant stopped. She said she told defendant she did not like it, and he responded: " 'Eventually you will.' " Defendant told her not to tell her mother because her mother would leave him. K.R. said she did not say anything until her mother asked her approximately two weeks ago. The State rested.

¶ 18 Defendant presented the testimony of Jazmyn Morrison, A.R.'s friend, who testified that in February 2014, A.R. told her that she would "find a way" to transfer to Pontiac

High School so she could continue her cosmetology classes. She said she had witnessed defendant and A.R. together, and their interaction always appeared normal.

¶ 19 Tammy Moore, A.R.'s ex-boyfriend's mother, testified that A.R. and her son, Jesse, dated for nine months beginning in February 2013. Moore said A.R. had told her multiple times that defendant treated her more like his child than her biological father.

¶ 20 Steven Moore, Jesse's father, testified A.R. did not seem afraid to be alone with defendant. He also said defendant was adamant that the abuse allegations were untrue.

¶ 21 James Hall, defendant's friend, testified he often visited at defendant's home and helped him with his race car or watched movies with the family. He never saw inappropriate contact between defendant and A.R.

¶ 22 Richard Bell and Casey Meister, both teachers at A.R.'s high school, testified that whenever they saw defendant and A.R. together at the school, they noticed nothing inappropriate. Meister testified that one week before the family moved from Cullom, A.R. told friends she was moving to Pontiac.

¶ 23 Defendant called Detective Bohm to the witness stand to testify that when he met Zimmer on March 11, 2014, she did not indicate that defendant had admitted touching A.R. inappropriately.

¶ 24 After considering the evidence and arguments of counsel, the trial court entered a written order finding defendant guilty of both charged offenses. The court described A.R., who was 18 years old at the time of trial, as "a very good witness," "soft-spoken, genuine, and calm," and "a credible and consistent witness." The court described K.R., who was 14 years old at the time of trial, as "credible, sincere, and honest." The court commented that K.R. "could not recall many of the details of the incident." However, the court stated, "[g]iven the time that has elapsed

since the incident occurred, the fact that K.R. could not recall specifics surrounding the incident[,] such as placement of furniture or which hand [defendant] used, does not cast doubt on her testimony considering all of the evidence in the case." The court found as follows:

> "In sum, the State has presented credible and consistent evidence that the defendant engaged in the acts complained of. A.R. was a particularly credible witness. Perhaps most telling are the similarities between what the defendant did to A.R. and K.R., both of whom told what happened to them at different times and without knowing about the other one. Further, had this been made up, K.R. for sure and, A.R. to some extent, would have been able to provide more details during their trial testimony. A.R. [*sic*] was very timid and shy during her CAC interview but did not appear to be coached or making anything up. Her trial testimony came years later[,] and understandably she had forgotten some details, including dates. There simply is not credible evidence to suggest that either of the girls made any of this up or that their mother somehow put them up to this. Although there were some discrepancies between the testimony of mother and the girls, one would expect that. Had they testified exactly the same, then it would appear as if they had rehearsed a story."

¶ 25 On April 25, 2017, the trial court conducted a sentencing hearing, first denying defendant's posttrial motion. The State presented a presentence investigation report with no further evidence. Defendant presented five character-reference letters as evidence but declined to make a statement in allocution. After considering the parties' recommendations, the court sentenced defendant to consecutive prison terms of 10 years on count I and 4 years on count II. The court denied defendant's subsequently filed motion to reconsider his sentence.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 A. Sufficiency of the Evidence

¶ 29 In a challenge to the sufficiency of the evidence, we must determine, after viewing the evidence in the light most favorable to the State, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). "[A] reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses." *People v. Brown*, 2013 IL 114196, ¶ 48. "[T]he testimony of a single witness, if positive and credible, is sufficient to convict[.]" *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). In a bench trial, the trial judge, sitting as fact finder, must determine the credibility of witnesses, weigh the evidence and reasonable inferences therefrom, and resolve any conflicts in the evidence. *Id.* A reviewing court will not substitute its judgment for the judgment of the trier of fact simply because the evidence is merely conflicting or contradictory, or defendant claims that a witness was not credible. *Id.*; *People v. Downin*, 357 Ill. App. 3d 193, 202 (2005). A criminal conviction will only be reversed where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *Brown*, 2013 IL 114196, ¶ 48. Defendant challenges his conviction on both counts.

¶ 30 1. *Predatory Criminal Sexual Assault of a Child*

¶ 31 First, we address defendant's conviction of predatory criminal sexual assault of a child as alleged in count I. 720 ILCS 5/11-1.40(a)(1) (West 2012). To prove this charge beyond a reasonable doubt, the State was required to show that defendant was 17 years of age or older and

committed an act of sexual penetration with K.R., a victim who was under 13 years of age when the act was committed. *Id.*

¶ 32 Defendant does not contest either of the statutory age requirements. Instead, he challenges the State's evidence relating only to whether he committed an act of sexual penetration. According to the statute, " '[s]exual penetration' " is defined as:

> "any contact, however slight, between the sex organ or anus of one person and an object or the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration." 720 ILCS 5/11-0.1 (West 2012).

¶ 33 Viewed in the light most favorable to the State, K.R.'s testimony and her statements during the CAC interview clearly established that defendant committed an act of sexual penetration. Although she was not clear on the exact time in terms of the day, month, season, or year the incident occurred, K.R. was clear on the details of defendant's conduct. She explained that, as she sat in the recliner and defendant sat on the couch next to her, he put his hand under her pants and under her underwear and stuck his finger into her vagina multiple times. During her CAC interview, she admitted to Sipes that she did not have a name for her specific body parts. She described her vagina only as the hole between her "butt hole" and "pee hole." However, at trial, she used the word vagina.

¶ 34 The trial court specifically found K.R. to be a credible witness, and we defer to the court on the issue of credibility. *Brown*, 2013 IL 114196, ¶ 48. Even without such deference,

we agree with the court's assessment. K.R. described the "couch incident" consistently to her mother, to Sipes in the CAC interview, and on the witness stand.

¶ 35 We reject defendant's arguments that K.R. provided false, inconsistent, and unbelievable testimony. He relies on K.R.'s inability to identify where the other family members were at the time, what clothes she had been wearing, what hand defendant used to touch her, how long the contact lasted, or what clothes defendant had been wearing. Defendant asserted that K.R. responded with "I don't know" 34 times during cross-examination. He argues her inability to recall even the most basic information tends to demonstrate her unreliability as a witness. We disagree with defendant's assessment.

¶ 36 The trial court described K.R. (we believe the court mistakenly referenced A.R. instead) as "very timid and shy during her CAC interview." It is unlikely K.R. had been coached since (1) she had no specific terms for her particular body parts, (2) she could not provide a rehearsed set of details regarding the incident, and (3) she consistently relayed the basic information of defendant's conduct. In further support of this court's conclusion, we find it compelling that, in her CAC interview, A.R. recalled that when she told defendant she did not like what he was doing, he responded with "eventually you will." We find it unlikely, given her demonstrated naivety, that she would have understood his implication to have fabricated such a statement.

¶ 37 We find that defendant's arguments do not directly refute K.R.'s consistent statements that defendant committed an act of sexual penetration at a time when K.R. was less than 13 years old. The fact that K.R.'s testimony lacked some detailed factual support, or the fact that she did not respond as expected to counsel's inquiry regarding a photograph of her, did not discredit her otherwise consistent allegations. See *Siguenza-Brito*, 235 Ill. 2d at 228 (in a bench

trial, the trial judge determines the credibility of witnesses, weighs the evidence while drawing reasonable inferences therefrom, and resolves any conflicts in the evidence). "A reviewing court will not reverse a conviction simply because the evidence is contradictory [citation] or because the defendant claims that a witness was not credible [citations]." *Id.* After reviewing the record and viewing the evidence in the light most favorable to the State, we conclude the evidence was sufficient for the court to find beyond a reasonable doubt that defendant had committed predatory criminal sexual assault against K.R.

¶ 38 2. *Aggravated Criminal Sexual Abuse*

¶ 39 Second, we address defendant's conviction of aggravated criminal sexual abuse as alleged in count II. 720 ILCS 5/11-1.60(f) (West 2012). To prove this charge beyond a reasonable doubt, the State was required to show that defendant was 17 years of age or older and committed an act of sexual conduct with A.R., a victim who was between 13 and 18 years of age when the act was committed. *Id.* Further, the State must prove defendant held a position of trust, authority, or supervision in relation to A.R. *Id.*

¶ 40 Again, defendant does not contest either of the statutory age requirements. Instead, he challenges the State's evidence relating only to whether he, in fact, committed an act of sexual conduct. According to the statute, " '[s]exual conduct' " is defined as:

> "any knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus, or breast of the victim or the accused, or any part of the body of a child under 13 years of age, or any transfer or transmission of semen by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or the accused." 720 ILCS 5/11-0.1 (West 2012).

¶ 41 We note, in its brief, the State does not argue in support of the sufficiency of the evidence related to count II. Nevertheless, we conclude, after viewing the evidence in a light most favorable to the prosecution, the evidence was sufficient to support defendant's conviction of aggravated criminal sexual abuse.

¶ 42 The trial court described A.R. as "a very good" and "a particularly credible witness." A.R. testified about several inappropriate incidents involving defendant, but with regard to the charged offense, A.R. said defendant rubbed her vagina through her clothing. She described the incident with clarity and detail. She described her reaction and how she tried to process the occurrence. She said she made a conscious decision not to immediately react to the abuse or to tell her mother for the sake of the family. Although she reportedly felt uncomfortable around defendant after the incident, she tried to keep it out of her mind. She was eventually compelled to tell her mother when her mother insisted she accompany defendant on a shopping trip. A.R. and Zimmer both testified as to the reason they allowed defendant the opportunity to improve on his behavior. These detailed and consistent facts support the reliability of A.R.'s testimony that defendant, in fact, committed an act of sexual conduct against her.

¶ 43 It is not this court's function to retry defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Rather, we defer to the trial court's judgment on witness credibility and the weight to be given to the evidence presented. *Siguenza-Brito*, 235 Ill. 2d at 228. Under this standard, we cannot say the evidence was so unreasonable, improbable, or unsatisfactory to justify a reasonable doubt of defendant's guilt. *Brown*, 2013 IL 114196, ¶ 48. This is so despite defendant's challenge to A.R.'s credibility regarding her emphatic desire to move to Pontiac. The trial court believed A.R.'s testimony, and we defer to the court's credibility determination in the absence of any unreasonable, improbable, or unsatisfactory evidence to the contrary. That is, we

conclude the evidence of defendant's conduct was sufficient to prove defendant guilty of aggravated criminal sexual abuse beyond a reasonable doubt.

¶ 44 B. Sentence

¶ 45 Defendant also challenges his sentence as excessive based upon his lack of a criminal history, his status as a victim of abuse as a child, his employment status, his poor health, and the positive character references he provided. Despite these claimed mitigating factors, the court sentenced defendant to 10 years in prison on count I, a Class X felony, and a consecutive term of 4 years in prison on count II, a Class 2 felony, which were unreasonably excessive sentences according to defendant.

¶ 46 A trial court has wide discretion in sentencing and should be reversed only when it abuses that discretion. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010). The power to overturn a sentence should be used " 'cautiously and sparingly'." *Id.* (quoting *People v. Jones*, 168 Ill.2d 367, 378 (1995)). "A sentence which falls within the statutory range is not an abuse of discretion unless it is manifestly disproportionate to the nature of the offense." *People v. Jackson*, 375 Ill. App. 3d 796, 800 (2007). Defendant's 10-year term of imprisonment on count I is well within the applicable range; in fact, it is near the minimum possible sentence. 720 ILCS 5/11-1.40(b)(1) (West 2012) ("A person convicted of [predatory criminal sexual assault of a child] *** shall be sentenced to a term of imprisonment of not less than 6 years and not more than 60 years."). Defendant's 4-year term on count II is also well within the applicable range of 3 to 7 years in prison. 730 ILCS 5/5-4.5-35(a) (West 2012).

¶ 47 Overall, defendant contends the trial court failed to consider any factors in mitigation. We disagree. The record indicates the court clearly identified two mitigating factors. First, the court noted the "strong mitigating factor" of defendant's lack of prior criminal history.

Second, the court noted the fact there was no physical harm to the victims. Taking those factors into consideration, the court noted they were outweighed by the "extremely strong factor" of deterrence. Noting the severity of the offense in count I, and the fact that a sentence of probation would "deprecate the serious nature" of the offense in count II, the court fashioned a sentence that it claimed would satisfy the goal of this state's sentencing scheme while also weighing the applicable factors in aggravation and mitigation. Because the imposed sentence falls within the statutory range and is not manifestly disproportionate to the nature of the offense, we do not find an abuse of discretion.

¶ 48 III. CONCLUSION

¶ 49 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal.

¶ 50 Affirmed.