2016 IL App (1st) 133806-U

FIRST DIVISION
February 22, 2016

No. 1-13-3806

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 5694
	)	
GLEN RUIZ,	)	Honorable
	)	Michael Brown
	)	Michael McHale,
Defendant-Appellant.	)	Judges Presiding.

JUSTICE CONNORS delivered the judgment of the court.
Presiding Justice Liu and Justice Cunningham concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction for predatory criminal sexual assault of a child affirmed; no abuse of discretion by the trial court in sentencing defendant to 50 years' imprisonment.

¶ 2 Following a jury trial, defendant Glen Ruiz was convicted of predatory criminal sexual assault of a child and sentenced to 50 years' imprisonment. On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt, and that his sentence is excessive because the trial court failed to give adequate consideration to various mitigating factors.

¶ 3 Defendant was tried on four counts of predatory criminal sexual assault of a child for acts committed against A.S., the five-year-old daughter of his live-in girlfriend. In Counts 1 and 2,

defendant was charged with committing an act of sexual penetration by making contact between his penis and A.S.'s mouth. In Counts 3 and 4, he was charged with committing an act of sexual penetration by inserting his finger into the vagina of A.S. In Counts 2 and 4, the State sought extended-term sentences on the basis that A.S. was under 13 years old.

¶ 4 The trial and sentencing hearing were presided over by Judge Michael Brown. At trial, A.S. testified that in March 2011, defendant was her mother's boyfriend and lived with their family. While her mother was at the store, defendant called A.S. into his bedroom, put her on the bed, covered her with a sheet, and passed gas. Defendant was not wearing any clothes, and he put his "private part," which was hard, in A.S.'s mouth. Something white came out of his private part and defendant told A.S. to eat it. He then moved his private part in a circular motion all around her face. Defendant also put his hand inside A.S.'s underwear and she felt his hand inside her private part. Defendant did this to A.S. on two different occasions. A.S. testified that defendant had previously hit her hard in the back, and following these incidents, he told her not to tell her mother what happened, and if she did, he would hit her.

¶ 5 A.S. acknowledged that she told her aunts and the assistant State's Attorneys (ASAs) what happened, but denied that they told her what to say in court. She also acknowledged that, on the day of trial, the ASA reviewed the questions she would ask her, and told her to tell the truth in court.

¶ 6 Elena Morales testified that about 7 a.m. on March 14, 2011, her sister Christina dropped off her one-year-old son and their five-year-old niece, A.S., at Elena's house and told Elena that A.S. had been crying and told Christina not to take her home. The children played with Elena's children for awhile, and Elena then took all of them to a restaurant for breakfast. While there, Elena asked A.S. why she did not want to go home. A.S. became very serious and did not

respond, and Elena repeatedly told her that if something was happening, she had to tell her. A.S. then touched her vagina and said that defendant was touching her "little parts." A.S. said that when her mother left the house, defendant locked her in her room, laid her on the bed, covered her with a sheet and touched her little parts. She also said that defendant put his thing in her mouth and told her to bite it, but she did not want to because she was "grossed out."

¶ 7 Elena testified that after they left the restaurant, she put the children in the car, called Christina and told her what happened. Elena asked Christina to call the police, and took the children back to her house. When they arrived home, Elena continued talking with A.S., and A.S. told her that that when defendant put her on the bed and covered her with the sheet, he farted and told her to smell them, and if she did not comply, he would hit her. A.S. also said that defendant told her that if she told anyone what happened, he would hit her.

¶ 8 Elena further testified that both Christina and the police arrived a few minutes later, and while A.S. sat on the couch inside the apartment with Elena, a female police officer stood in front of A.S. and asked her questions. A.S. told the officer the same information she had shared with Elena at the restaurant. Elena denied telling A.S. what to say about defendant, and said that she told A.S. to be brave and tell the police the truth, and they would help her.

¶ 9 Chicago police officer Irma Lopez-Malave testified that about 11:15 a.m. on March 14, 2011, she and her partner, Officer Murphy, responded to a call regarding a domestic disturbance, and met with A.S. and her aunt, Christina, who were standing on the sidewalk in front of the residence. Officer Lopez-Malave introduced herself to A.S., who was standing next to her aunt, was very shy, had her fists tightly clenched, and did not look up. The officer crouched down to her knees and told A.S. to look at her as a mom rather than a police officer, and that she was free to talk to her. A.S. then told the officer that defendant put a blanket over her head and made her

touch his "cosita," which means "thing" in Spanish, and that he touched her cosita, and she pointed to her vaginal area. A.S. also said that defendant pushed his penis into her mouth.

¶ 10 Officer Lopez-Malave immediately contacted the Children's Advocacy Center and drove A.S. and her aunt to Mount Sinai Hospital. The officer confirmed that their entire conversation occurred outside the residence, she never entered the house, and A.S. was not sitting on a couch, but was standing on the sidewalk in front of the stoop. She also confirmed that when the officers arrived at the home, A.S.'s aunt, Elena, approached them immediately, and Officer Lopez-Malave spoke to the aunt for no more than a minute to find out who she was.

¶ 11 Chicago police officer Edward Langle testified that about 11:20 a.m. on the day in question, he and his partner, Officer Christopher Stenzel, responded to an assist call from Officer Lopez-Malave and were given defendant's name and address. They proceeded to defendant's residence, placed him under arrest, and brought him to the police station.

¶ 12 Chicago police detective Emily Rodriguez testified that about 3 p.m. on March 14, 2011, she interviewed A.S. in her office at the Chicago Children's Advocacy Center, with ASA Tom Sianis and Cynthia Pettis from the Department of Children and Family Services present to observe the interview. A.S. held up five fingers to indicate how old she was, she knew some of her colors, and she could count to two. A.S. said that she lived with her mother, her siblings, and a man named Glen. She identified various parts of her body, and referred to her vaginal area as her "cosita," which means "thing" or "little thing."

¶ 13 A.S. told Detective Rodriguez that defendant took her underneath a blanket and farted, and put his cosita on her face. A.S. identified defendant's cosita as the front part of a boy and pointed to her groin area. A.S. said that defendant's cosita was very ugly and hard and that stuff came out of it. She pointed to the white color on a candy wrapper and said that was the color of

the stuff that came out of defendant. A.S. said that when the stuff went in her mouth it tasted like shampoo. She also said that defendant put his hand inside her underwear and it felt very ugly. A.S. said that this happened many times when her mother was not home or was in the shower, and defendant told her not to tell her mother what happened or he would hit her.

¶ 14 Later that night, Detective Rodriguez went to the police station and interviewed Elena Morales, then met with defendant, read him his *Miranda* rights and interviewed him with Detective Mark Dimeo present. Defendant admitted to the detectives that he was underneath the blanket with A.S. when her mother was not home. Shortly thereafter, while ASA Sianis interviewed defendant, Detective Rodriguez translated Spanish to English, and she and Detective Dimeo were present when defendant gave a written statement to the ASA. The detectives, ASA Sianis and defendant reviewed the statement together, defendant requested a couple of changes, and they all signed each page of the statement to attest to its accuracy. Detective Rodriquez acknowledged that during the interview with ASA Sianis, defendant initially denied assaulting A.S., but he then discussed his acts with her.

¶ 15 Detective Rodriguez further testified that, in this case, there was no physical evidence available that they could have collected from A.S. because any physical evidence would have been on her at the time of the assault. The detective explained that A.S. could not tell them what date the assault occurred, days had passed since it happened, and the detective saw no physical evidence while she interviewed A.S. The detective also acknowledged that the home was not searched and the blanket was never recovered.

¶ 16 ASA Tom Sianis testified that on March 14, 2011, he observed Detective Rodriguez interview A.S. at the Children's Advocacy Center, then went to the police station with the detective and interviewed Elena Morales. Thereafter, with Detectives Rodriguez and Dimeo

present, Sianis interviewed defendant, and after being advised of his *Miranda* rights, defendant admitted that he put his penis on A.S.'s lips, that he put her underneath the covers in his bed and passed gas, and that she did not like it and left.

¶ 17 Defendant then agreed to have his statement documented in writing, and Detectives Rodriguez and Dimeo were present while ASA Sianis wrote defendant's statement, in which he acknowledged that the sexual abuse of A.S. occurred between February 3, 2010, and March 12, 2011. Defendant stated that about eight or nine months earlier, he was sitting on the couch in his living room watching television, drinking beer and masturbating with his penis in his hand when A.S. ran into the room. He then stood up, ejaculated onto the floor in front of A.S., and ran into the bathroom. In another incident around that same time, defendant and A.S. were alone in the house sitting on the couch watching television when he pulled out his erect penis, stood up, placed his penis on A.S.'s lips and mouth, and some pre-ejaculation from his penis dripped into her mouth. Defendant also stated that a month earlier, while his girlfriend Maria was in the bathroom, A.S. came into his room where he was lying in bed wearing only jogging pants. He then pulled A.S. into the bed, covered her with a sheet, passed gas and held her there so she could smell it, and her face accidentally brushed against his penis. Defendant acknowledged that he knew A.S. was four or five years old when these incidents occurred.

¶ 18 Dr. Okechukwu Okeke, a child abuse pediatrician at Stroger Hospital and the Chicago Children's Advocacy Center, testified that on March 14, 2011, he and Dr. Michelle Lorand examined A.S. together, and she told them that defendant got under the covers with her, farted, put his penis in her mouth and digitally penetrated her. A.S. pointed to a piece of white paper and said that was the color of the stuff that came out of defendant's penis. She also said that defendant grabbed her, put his hand underneath her pants, and grabbed her private area. A.S. did

not know how many times it happened or the exact dates that the incidents occurred, but said that it did not happen during the preceding weekend. She said that the incidents occurred in their house while her mother was home.

¶ 19 Dr. Okeke further testified that Dr. Lorand conducted a physical examination of A.S. and reviewed her findings with him. The exam revealed poor genital hygiene, but otherwise normal results regarding her genital area. Dr. Okeke explained that it is normal for a sexually abused child to have a normal genital exam because the genital area heals quickly, there would not be a tear or bleeding if the offender rubbed the child's genitals, a family member generally is not as rough with a child as compared to when an adult is assaulted, and the child's disclosure sometimes occurs months or years after the initial injury. He further explained that many times there are no genital injuries, and a normal genital exam does not indicate that the child was lying. It is very common for a young girl to have a normal genital exam even when her vagina was digitally penetrated, and when there is an allegation that the penis touched her face or mouth.

¶ 20 Based on the interview and examination, Dr. Okeke opined that A.S. was sexually abused. His opinion was primarily based on A.S.'s verbal disclosure and clear description of the history of what occurred, which is normally not expected from a five-year-old child unless she was involved in that situation.

¶ 21 The State introduced certified copies of the birth certificates for both A.S. and defendant which showed that A.S. was born in 2006 and defendant was born in 1982.

¶ 22 Following deliberations, the jury found defendant guilty of predatory criminal sexual assault on Counts 1 and 2 for making contact between his penis and A.S.'s mouth. The jury was unable to come to a unanimous decision on Counts 3 and 4 alleging that defendant inserted his finger into A.S.'s vagina, and the court declared a mistrial as to those two counts.

¶ 23 At sentencing, the State argued in aggravation that defendant violated a very young victim with whom he stood in a position of trust, essentially as a stepfather who was supposed to be a protector and provider. The State argued that defendant trapped A.S. and performed acts on her that defiled and demeaned her. The State pointed out that the sentencing range was 6 to 60 years' imprisonment, and argued that defendant should receive a sentence near the maximum end of that extended range so that he would not be able to harm any young child again.

¶ 24 Defense counsel argued in mitigation that defendant was 31 years old, and although born in Texas, was raised in extreme poverty in Mexico. Counsel pointed out that defendant had a third-grade education and worked as a scraper trying to make a living with a very low income. Counsel acknowledged that defendant had an arrest for driving under the influence and argued that alcohol had played a negative role in his life, but also pointed out that he had no other arrests and no history of violence. Counsel further argued that every predatory criminal sexual assault case is horrible, and that when someone has no criminal background except for an alcohol offense, such as defendant, the minimum term is required. Defendant also presented a certificate of completion for the second chance mentoring program at the Cook County Department of Corrections, and the trial court stated that it would consider that document.

¶ 25 In announcing the sentence, the court stated:

> "The Court has considered the facts and circumstances of this case. The Court has considered the statutory aggravating and mitigating factors, the Court has considered the pre-sentence investigation, the Court has considered the certificate of achievement that Mr. Ruiz has, the Court has considered the arguments of the parties, and the Court is prepared to fashion a sentence that I think is appropriate under all of the circumstances."

The court then merged Count 2 into Count 1 and sentenced defendant to 50 years' imprisonment.

¶ 26 Defendant filed a timely motion to reconsider his sentence arguing, *inter alia*, that it was excessive, that the court did not state the aggravating and mitigating factors when imposing the sentence, and that the court failed to weigh the aggravating and mitigating factors. At an October 28, 2013, hearing, the court, Judge Michael McHale presiding, stated that he read all of the trial transcripts, "including Judge Brown's sentencing," and found, based on his own assessment, that given the serious nature of the case, defendant was a continuing danger to public safety. The court stated that it considered the age of the child and the acts committed by defendant, found that the sentence imposed by Judge Brown was appropriate, and denied defendant's motion.

¶ 27 On appeal, defendant first contends that the State failed to prove him guilty beyond a reasonable doubt because the record is completely devoid of any corroborating medical evidence. He also argues that the testimony from the outcry witnesses contradicted each other because Elena testified that she was sitting on the couch with A.S. inside the house when the police officer spoke with A.S., and Officer Lopez-Malave testified that she never entered the house and spoke with Christina and A.S. on the sidewalk.

¶ 28 The State responds that the evidence against defendant was overwhelming, the victim's testimony alone was sufficient to sustain his conviction, and corroborating physical or medical evidence was not required. The State further argues that any minor inconsistencies regarding the location of A.S.'s outcry to Officer Lopez-Malave, whether inside or outside, did not impact the crux of her outcry, and all of the witnesses consistently testified that A.S. said that defendant put his penis in her mouth.

¶ 29 When defendant claims that the evidence is insufficient to sustain his conviction, this court must determine whether any rational trier of fact, after viewing the evidence in the light most favorable to the State, could have found the elements of the offense proved beyond a

reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31. This standard applies whether the evidence is direct or circumstantial, and does not allow this court to substitute its judgment for that of the fact finder on issues involving witness credibility and the weight of the evidence. *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009). "Under this standard, all reasonable inferences from the evidence must be allowed in favor of the State." *Baskerville*, 2012 IL 111056, ¶ 31.

¶ 30 As the trier of fact, the jury is responsible for determining the credibility of the witnesses, weighing the evidence, resolving conflicts in the evidence, and drawing reasonable inferences there from. *Jackson*, 232 Ill. 2d at 281. We will not reverse a criminal conviction based upon insufficient evidence unless the evidence is so improbable or unsatisfactory that there is reasonable doubt as to defendant's guilt (*People v. Givens*, 237 Ill. 2d 311, 334 (2010)), nor simply because defendant claims that a witness was not credible or that the evidence was contradictory (*People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009)).

¶ 31 To prove defendant guilty of predatory criminal sexual assault of a child in this case, the State was required to show that defendant was more than 17 years old and committed an act of sexual penetration upon A.S. by making contact between his penis and her mouth, and that A.S. was under 13 years old when the act was committed. 720 ILCS 5/12-14.1(a)(1) (West 2010). "Sexual penetration," as relevant in this case, is defined as "any contact, however slight between the sex organ" of one person and the mouth of another person. 720 ILCS 5/12-12(f) (West 2010).[1] "Evidence of emission of semen is not required to prove sexual penetration." *Id*. Furthermore, a victim's testimony need not be corroborated by physical or medical evidence to sustain a criminal sexual assault conviction. *People v. Le*, 346 Ill. App. 3d 41, 50 (2004).

[1] Effective July 1, 2011, the definition of "sexual penetration" was merged into the offense of predatory criminal sexual assault of a child and is now codified at 720 ILCS 5/11-1.40(a) (West 2014).

¶ 32 Viewing the evidence in the light most favorable to the State, we find that such evidence overwhelmingly established that defendant sexually assaulted A.S. by making contact between his penis and her mouth. A.S. testified that defendant called her into his bedroom, put her on the bed, covered her with a sheet and passed gas, then placed his "private part," which was hard, in her mouth. She further testified that something white came out of his private part and defendant told her to eat it.

¶ 33 In addition to A.S.'s testimony, four outcry witnesses testified that A.S. told them about the incident, and each witness' testimony regarding A.S.'s outcry was substantially the same. Elena Morales, A.S.'s aunt, testified that A.S. told her that defendant put her on the bed, covered her with a sheet, farted and told her to smell them, touched her "little parts," and put his "thing" in her mouth and told her to bite it. Officer Lopez-Malave testified that later that morning, A.S. told her that defendant put a blanket over her head, made her touch his "cosita," and pushed his penis into her mouth. The officer further testified that A.S. told her that defendant touched her cosita, and she pointed to her vaginal area.

¶ 34 Similarly, Detective Rodriguez testified that later that afternoon, A.S. told her that defendant took her underneath a blanket and farted, and put his cosita on her face, which she identified as the front part of a boy while pointing to her groin area. The detective also testified that A.S. told her that defendant's cosita was very ugly and hard, that white stuff came out of it, and that the white stuff tasted like shampoo when it went in her mouth. In addition, Dr. Okeke testified that A.S. told him and Dr. Lorand that defendant got under the covers with her, farted, put his penis in her mouth, and that white stuff came out of his penis.

¶ 35 Moreover, the testimony from A.S. and the outcry witnesses was corroborated by defendant's own statement in which he admitted that he sexually abused A.S. between February

3, 2010, and March 12, 2011. Defendant described one incident that occurred several months before his arrest, stating that he and A.S. were alone in the house sitting on the couch watching television when he pulled out his erect penis, stood up, placed his penis on A.S.'s lips and mouth, and some pre-ejaculation from his penis dripped into her mouth. Defendant also stated that a month earlier, while A.S.'s mother was in the bathroom, A.S. came into his room and he pulled her into the bed, covered her with a sheet, passed gas and held her there to smell it, and that her face accidentally brushed against his penis. Defendant also acknowledged that he knew A.S. was four or five years old when these incidents occurred.

¶ 36 Contrary to defendant's contention, there is no requirement that a victim's testimony be corroborated by physical or medical evidence to sustain a conviction for criminal sexual assault. *Le*, 346 Ill. App. 3d at 50. Furthermore, the record shows that Detective Rodriguez testified that there was no physical evidence available to collect from A.S. because any such evidence would have been on her at the time of the assault, and days had passed since the assault occurred. In addition, Dr. Okeke explained that it is very common for a young girl to have a normal genital exam when the allegation is that the offender's penis touched the victim's face or mouth.

¶ 37 We also find no merit in defendant's claim that the testimony of the outcry witnesses was unreliable because Elena and Officer Lopez-Malave contradicted each other regarding the location of the officer's interview with A.S. Elena testified that the interview occurred inside her home while A.S. was sitting with her on the couch, and Officer Lopez-Malave denied that she ever entered the home and testified that the interview occurred on the sidewalk outside the residence. Defendant also points out that the officer testified that it was Christina, A.S.'s other aunt, who was with A.S. during the interview rather than Elena. Although the record bears out these discrepancies, we find that they were insignificant and had no effect on the outcome of this

case where both witnesses testified substantially the same regarding A.S.'s outcry to each of them. Here, it was the jury's responsibility to assess the credibility of the witnesses and resolve any conflicts in their testimony, and we find no basis for disturbing the jury's determination that the evidence sufficiently proved defendant guilty beyond a reasonable doubt. *Jackson*, 232 Ill. 2d at 281.

¶ 38 Defendant next contends that the trial court abused its discretion when it sentenced him to 50 years' imprisonment because it did not list the specific aggravating and mitigating factors that it considered when it imposed sentence. He also argues that the court failed to give adequate consideration to his mitigating evidence and potential for rehabilitation which showed that he had no significant criminal background, was 31 years old, and was steadily employed as a junk collector since 2006.

¶ 39 Predatory criminal sexual assault of a child, as charged in this case, is a Class X felony with a sentencing range of 6 to 60 years' imprisonment. 720 ILCS 5/12-14.1(b)(1) (West 2010). The trial court has broad discretion in imposing an appropriate sentence, and where, as here, that sentence falls within the statutory range, it will not be disturbed on review absent an abuse of discretion. *People v. Jones*, 168 Ill. 2d 367, 373-74 (1995). An abuse of discretion exists where a sentence is at great variance with the spirit and purpose of the law, or is manifestly disproportionate to the nature of the offense. *People v. Alexander*, 239 Ill. 2d 205, 212 (2010).

¶ 40 Here, we find that defendant's sentence was not excessive and that the trial court did not abuse its discretion when it imposed the 50-year term. The record shows that the trial court expressly stated that it considered the facts and circumstances in this case, the statutory factors in aggravation and mitigation, the information contained in the pre-sentence investigation report, the certificate of achievement defendant presented to the court, and the arguments of counsel. In

his argument, defense counsel specifically noted that defendant was 31 years old, was raised in extreme poverty, had a third-grade education, worked as a scraper, and had only one DUI arrest with no other arrests or history of violence. The record thus shows that the trial court was aware of all of defendant's mitigating evidence and considered that evidence when it imposed the sentence. In addition, when the court denied defendant's motion to reconsider his sentence, it stated that defendant was a continuing danger to public safety. We observe that a sentencing court need not give defendant's potential for rehabilitation greater weight than the seriousness of the offense (*People v. Anderson*, 325 Ill. App. 3d 624, 637 (2001)), and when the trial court determines that a severe sentence is warranted, defendant's age has little import (*People v. Rivera*, 212 Ill. App. 3d 519, 526 (1991)).

¶ 41 Furthermore, the trial court is not required to articulate for the record in precise detail the exact process by which it determined the sentence, nor is it required to articulate its consideration of the mitigating factors or its express finding that defendant lacked potential for rehabilitation. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). This court will not reweigh the sentencing factors or substitute our judgment for that of the trial court (*Alexander*, 239 Ill. 2d at 213), and based on the record before us, we cannot say that the sentence imposed by the court is excessive, manifestly disproportionate to the nature of the offense, or that it departs significantly from the intent and purpose of the law. *People v. Fern*, 189 Ill. 2d 48, 56 (1999).

¶ 42 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 43 Affirmed.