FOURTH DIVISION
December 21, 2017

No. 1-14-3470

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 CH 2581
	)	
RASHAWN COLEMAN,	)	Honorable
	)	Nicholas Ford,
Defendant-Appellant.	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: Conviction affirmed. Evidence was sufficient to establish beyond reasonable doubt that defendant digitally penetrated victim, and sentence could not be reduced to aggravated criminal sexual abuse. Mittimus corrected.

¶ 2 After a bench trial, defendant Rashawn Coleman was convicted of five counts of home invasion while armed with a firearm, two counts of armed robbery with a firearm, and one count of aggravated criminal sexual assault while armed with a firearm.[1] Of these counts, he appeals just the one conviction for aggravated criminal sexual assault. He claims that the State failed to prove beyond a reasonable doubt that he committed the criminal sexual assault, and alternatively, even if there was evidence of sexual conduct, the conviction should be reduced to aggravated

[1] Defendant was tried simultaneously with the jury trials for two co-defendants, Ned James and Cortez Moore.

criminal sexual abuse. We disagree. We find sufficient evidence that defendant digitally penetrated A.W., and thus his conviction for aggravated criminal sexual assault should be neither reversed nor reduced to aggravated criminal sexual abuse.

¶ 3 Additionally, Defendant contends that his mittimus should be corrected to reflect the merger of five counts of home invasion into just one conviction. Defendant also submits that his mittimus should be corrected from a 24-year sentences for armed robbery and home invasion to reflect the proper 23-year sentences given by the trial judge. The State agrees on both mittimus contentions, and so do we. We thus order the mittimus corrected.

¶ 4 I. BACKGROUND

¶ 5 A more detailed discussion of the events leading to defendant's arrest can be found in the cases involving codefendants Ned James and Cortez Moore. See *People v. James*, 2017 IL App (1st) 143391; *People v. Moore*, 2017 IL App (1st) 1150208-U.

¶ 6 Believing they were robbing a drug house, four men—defendant, James, Moore, and another man, Sistrunk (who died before trial)—broke into an apartment on South Wentworth Avenue in Chicago. The apartment was home to two couples and a baby: Maritza Morales, Khalil Cromwell Sr., and their eight-month-old son, Khalil Jr.; as well as Isaac Andrews and his girlfriend, A.W. The State secured convictions for armed robbery and home invasion against all three defendants, but because this defendant challenges only the aggravated criminal sexual assault conviction, we will limit our discussion of the facts to that offense.

¶ 7 The evidence of defendant's criminal sexual assault of A.W. relied on the testimony of A.W. herself and her then-boyfriend, Andrews. A.W. testified that about 3:45 A.M., she was home asleep next to Andrews in pajama shorts and a bra. She woke when Andrews jumped out of bed because of a "boom" sound. When Andrews opened the door to their bedroom, A.W. saw

two men pointing a long, wooden gun at his face and directed him to get on the ground. A.W. testified that one of them was tall and wearing a mask, and the other was shorter and heavier, and not wearing a mask. She identified the man not wearing a mask as defendant. Noticing her attempt to hide under the covers, the intruders ordered A.W. to undress and get on the ground next to Isaac. (Andrews recalled three intruders in the bedroom, while A.W. recalled two.)

¶ 8 While she was on the floor, A.W. testified that the intruders repeatedly demanded to know where the money and "the white" were stashed. (The evidence showed that the intruders were mistaken; this was not a “drug house,” and no drugs or piles of cash were to be found.) To motivate them to cooperate, the intruders hit Andrews across the head with a crow bar and threatened to drop a weight on his head. She also could hear noises coming from the kitchen area down the hall, which she assumed to be additional intruders in the apartment.

¶ 9 A.W. testified that she was moved, naked, to the kitchen, where she saw Cromwell on the floor with his hands and legs duct-taped together, and Morales in the corner holding her baby. After moving A.W., Andrews joined the others on the kitchen floor as well, hands still bound by duct tape. Although A.W. was positioned lying face down, still naked and with her buttocks visible, she heard defendant's voice and could see that all the intruders were in the kitchen. She did not recall if defendant was wearing a mask at that time.

¶ 10 A.W. testified that she remembers just one person hovering over her, eventually touching her buttocks, and identified that person as defendant. After touching her buttocks, defendant inserted his fingers into A.W.'s vagina. The day after the incident, however, A.W. told police that all the intruders squeezed her buttocks, not just defendant.

¶ 11 Eventually, police arrived at the apartment and arrested the four intruders. While speaking to the police, A.W. identified herself as "Portia Walker" and gave a false social security

number. She did so because she had an outstanding warrant from another county for a forgery conviction in 2010. She testified at trial that she declined offers to go to a hospital at that time, but the parties later stipulated that she did, in fact, go to a hospital, though she declined treatment when there.

¶ 12 Other than recalling three intruders inside the bedroom rather than two as A.W. testified, Andrews corroborated A.W.'s testimony up to her removal to the kitchen. After she left, Andrews testified that his hands were bound with duct tape above his head, and that he noticed two guns, one which was a "long like shotgun rifle," while walking to the kitchen. When he got there, he was told to lie face down on the floor with his hands above his head.

¶ 13 Although he could not see what the intruder was doing, nor identify which intruder it was, Andrews could see someone in black clothing bend over A.W.'s legs. He testified that "One of them was like spread your legs. Let me see, you know, fat ass p[*]ssy, you know, little vulgar words towards her p[*]ssy," and said "That's big old fat p[*]ssy." He did not testified as to whether any intruder either touched or squeezed A.W.'s buttocks. But Andrews was able to identify one intruder in the kitchen as defendant, holding a "long rifle," because he was not wearing a mask.

¶ 14 Maritza testified that she and her baby were found hiding in the closet of her bedroom by the intruder with the "Halloween mask," whereupon she was grabbed by her hair and taken to the kitchen while clutching her infant. When she arrived in the kitchen, she was told to face the wall, but would glance at the other three apartment occupants periodically to check on them. She testified that when A.W. was brought to the kitchen, A.W. was not wearing clothes.

¶ 15 Maritza was able to identify defendant as the intruder who duct taped Cromwell and Andrews, because he was the only one without a mask. While the others rummaged about the

apartment, Maritza testified that defendant guarded the group with a "silver little gun." She did not offer testimony on what contact, if any, defendant may have had with A.W.

¶ 16 Officer Daniel Randall, Jr. testified that he was the first officer to enter the apartment. Upon entry, he headed to the kitchen area, where he saw a man in a mask, kicking and beating another man lying on the floor. His instructions to this man were to "Drop the mask, or I will blow your f[*]cking face off." According to Randall, defendant took off the mask, put the gun inside the mask, and tossed it into an open room. Once the mask was removed, Randall identified this intruder as defendant and indicated that the gun defendant was holding was "small blue steel." After the intruders were detained, one woman ran to hug him, and Randall testified that this woman was naked.

¶ 17 Lisa Kell, a forensic scientist specializing in forensic biology and DNA analysis, testified that items found at the scene of the home invasion—a black ski mask, a rubber mask, neck fleece, and a black cloth mask—were assigned to her for DNA testing. Through these procedures, it was determined defendant "could be excluded" as a wearer of the rubber mask, the neck fleece, and the cloth mask. But the black ski mask contained just enough of defendant's DNA that, although she could not say definitively that defendant was wearing it, defendant "cannot be excluded" from having worn it.

¶ 18 Cynthia Engelking-Prus, a latent print examiner for the Illinois State Police Crime Lab, examined two guns found at the scene. She testified that there were no latent impressions on either gun, nor were there any on the ammunition or magazine clip. Ryan Paulson, a forensic scientist with the Illinois State Police, testified that defendant's DNA profile could be excluded from both a knife and roll of duct tape also found at the scene. The only fingerprints found on the roll of duct tape belonged to Cromwell.

¶ 19 Defendant received concurrent sentences of 23 years for armed robbery and 23 years for home invasion, to be served consecutively with a 21-year sentence for aggravated criminal sexual assault.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 A. Sufficiency of the Evidence

¶ 23 Defendant challenged the sufficiency of the State's evidence as to counts thirteen and fourteen, which alleged defendant committed acts of aggravated criminal sexual assault against A.W. (720 ILCS 5/12-14(a)(8) (West 2010)).[2]

¶ 24 When reviewing the sufficiency of the State's evidence, we determine whether any rational trier of fact, viewing the evidence in the light most favorable to the State, could have found the essential elements of the crime beyond a reasonable doubt. *People v. Schott*, 145 Ill. 2d 188, 204 (1991); *People v. Soler*, 228 Ill. App. 3d 183, 197 (1992). Sexual-assault cases no longer require that the complainant's testimony be either clear and convincing or corroborated. *People v. Westfield*, 207 Ill. App. 3d 772, 777 (1990). We will not substitute our judgment for that of the trier of fact with regard to the credibility of witnesses, the weight to be given to each witness's testimony, or the reasonable inferences to be drawn from the evidence. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). A defendant's conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 225 (2009).

[2] Sex offense statutes were renumbered effective July 1, 2011, after the crime in question. 720 ILCS 5/12-14(a)(8) was renumbered as 720 ILCS 5/11-1.30(a)(8).

¶ 25 Defendant was convicted of aggravated criminal sexual assault. A person commits criminal sexual assault when he "commits an act of sexual penetration" with the use or threat of force. 720 ILCS 5/12-13(a)(1) (West 2010).[3] The crime becomes aggravated if that person commits criminal sexual assault along with any of the ten enumerated aggravating circumstances during the commission of the offense—here, being armed with a firearm. 720 ILCS 5/12-14(a)(8) (West 2010).

¶ 26 1. Aggravated Criminal Sexual Assault

¶ 27 Defendant claims the State failed to prove him guilty on two counts of aggravated criminal sexual assault, because his conviction was based almost entirely on the uncorroborated testimony of A.W., who he claims was an unreliable witness for various reasons.

¶ 28 "A vague or doubtful identification will not sustain a conviction beyond a reasonable doubt." *People v. Sutton*, 252 Ill. App. 3d 172, 180 (1993). But our Supreme Court has long held that uncorroborated testimony of even one witness, often the victim, is sufficient to convict. *People v. Novotny*, 41 Ill. 2d 401, 411 (1968). A single-witness identification of the accused can sustain a conviction, provided the witness is credible and the circumstances were adequate to permit her to identify the defendant. *Id.*; *People v. Courtney*, 288 Ill. App. 3d 1025, 1036 (1997). Any flaw in the testimony, as well as minor contradictions and inconsistencies, only impact the weight to be given the testimony by the trier of fact, and do not themselves create a reasonable doubt. *People v. Brink*, 294 Ill. App. 3d 295, 300 (1998); *People v. Williams*, 223 Ill. App. 3d 692, 697 (1992).

¶ 29 Viewing the evidence in the light most favorable to the State, we find sufficient evidence to demonstrate that defendant digitally penetrated A.W. with the threat of force. Andrews and

[3] Renumbered as 720 ILCS 5/11-1.20(a)(1).

A.W. testified that upon entering the home, multiple intruders, including defendant with a gun, found A.W. hiding underneath bed covers and ordered her to remove her clothes. Both Maritza and Andrews corroborated A.W.'s testimony that she remained naked when brought to the kitchen, and Randall testified that a naked woman ran up to him after the intruders were arrested. A.W. then testified that defendant hovered over in the kitchen, "she saw him touch [her] butt," which she described as "a smack, grab" of the buttocks, and then he inserted his fingers into her vagina.

¶ 30 Defendant first contends that the evidence did not prove beyond a reasonable doubt that it was defendant, as opposed to another intruder, who digitally penetrated her. Defendant says that A.W. "could not have seen [the attacker's] face because she admitted she did not know whether [the attacker] was wearing a mask." But A.W. testified that she *saw* defendant grab or smack her buttocks. She explained that, though she was lying face down, her face was not planted on the floor: "[I]t wasn't all the way face on the floor. Like you, you know, I can still see like from my peripheral [vision] what was going on." In fact, she testified that, while lying face down on the floor, she could see every one of the intruders inside the house.

¶ 31 A.W. also stated that she could recognize defendant's voice while in the kitchen, based on hearing his voice in the bedroom earlier. That is important because Andrews, lying next to her on the floor, though unable to identify the man, did testify that he saw one of the men bend over A.W. in the kitchen, and that he heard the following words: "[S]pread your legs. Let me see, you, know, fat ass p[*]ssy, you know, little vulgar words towards her p[*]ssy," and said "That's big old fat p[*]ssy.". That confirms that the sexual assaulter spoke to A.W., which lends credence to her claim to have recognized defendant by his voice, as well.

¶ 32 It is true that, when asked whether her assailant was wearing a mask at the time of the sexual assault, A.W. testified: "At this point I don't know if he was wearing a mask or not." As the evidence shows that defendant initially was not wearing a mask early on in the attack—a fact confirmed by A.W., Andrews, and Morales, all of whom saw his unmasked face—and he *was* wearing a mask when the officer entered the apartment and confronted defendant, it seems abundantly obvious that, at some point during the crime, defendant donned a mask. And that makes sense, as some time elapsed even between the sexual assault and the arrival of the police, as A.W. testified that the intruders continued to ransack the house for drugs and began stealing other things—wallets, video games, phones—before the police kicked in the door.

¶ 33 In any event, a reasonable fact finder could have found that A.W. simply did not recall the specific detail of whether defendant was wearing a mask during the sexual assault at the time of trial, which is different than saying she didn't know at the time of the attack. Though defendant would like to paint the picture of a victim lying face down, unable to see her assailant, A.W. quite clearly testified to the contrary. She testified several times at trial that she saw defendant hovering over her and sticking his fingers inside her vagina. She said she could see peripherally around her as she lay on the floor. And even if, theoretically, defendant had been wearing a mask, she could have identified him through other physical features while he hovered over her—he was shorter and heavier-set than the masked man in the bedroom—as well as recognizing his voice. To that, we would add that at the time of the incident, when her memory was far fresher than it was four years later from a witness stand, she identified defendant as her attacker. All things considered, we cannot say that A.W.'s identification of defendant is so unreliable that no rational trier of fact would have accepted it.

¶ 34 Defendant points to other inconsistencies in A.W.'s testimony. First, her account differed from the report she gave to the police. She told the police that it was the "biggest man wearing black clothes in a mask" that "grabbed her butt," but that it was defendant who approached her and digitally penetrated her vagina several times. But at trial, A.W. stated that only defendant touched her buttocks and subsequently stuck his fingers inside her vagina. When pressed at trial, she noted that these events happened four years ago, and she said that whatever she told the police at the time would be more accurate than her memory on the question of who grabbed her buttocks, but she insisted that she was certain that it was defendant, and no one else, who digitally penetrated her vagina.

¶ 35 Defendant also notes that A.W. testified that she declined offers to go to a hospital—because she did not want "somebody stick[ing] stuff in me and do all that" after experiencing the pain and terror of the digital penetration—while the parties later stipulated that A.W. did, in fact, go to a hospital but then refused treatment. The difference between declining to go to a hospital because she did not want to be poked and prodded, and going but declining treatment once there for the same reason, does not strike us as a material one, especially considering the four-year passage of time and the fact that, in light of the horror she experienced that night, details about a hospital visit would probably not be foremost in a victim's memory.

¶ 36 The law does not require victims' testimony to be unimpeached, uncontradicted, or perfect to establish guilt beyond a reasonable doubt. See *People v. Daniels*, 164 Ill. App. 3d 1055, 1073 (1987). The trial court is charged with weighing these minor contradictions. *Williams*, 233 Ill. App. 3d at 697, and these inconsistencies did not concern "major points" regarding the sexual assault itself. See *People v. Bofman*, 283 Ill. App. 3d 546, 553 (1996).

¶ 37 Defendant next argues that A.W. was not credible, as she had a criminal record, and she lied about her identity because she had an outstanding warrant. The trial court heard the evidence of her 2010 forgery conviction and the fact that she gave a false name to the police to avoid an outstanding warrant on that conviction. The trial court specifically stated that it found A.W. reliable regardless, particularly because defendant was found at the scene and other corroborating evidence as we have discussed. We will not substitute our judgment for that of the trier of fact with regard to the credibility of witnesses, the weight to be given to each witness's testimony, or the reasonable inferences to be drawn from the evidence. *Ross*, 229 Ill. 2d at 272.

¶ 38 In sum, we reject defendant's challenge to A.W.'s identification of defendant as the man who sexually assaulted her.

¶ 39 2. Lesser-Included Offense

¶ 40 Defendant also contends that even though there may be evidence sufficient to constitute sexual conduct, there is not enough evidence to support sexual penetration. Thus, he argues, even if he was found to have touched A.W.'s vagina, his conviction should be reduced to aggravated criminal sexual abuse and remanded for resentencing.

¶ 41 As stated earlier, one commits criminal sexual assault when that person "commits an act of sexual penetration" with the use or threat of force. 720 ILCS 5/12-13(a)(1) (West 2010).[4] "Sexual penetration," when committed, as here, digitally (that is, not by a sex organ, mouth, or anus), involves "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." 720 ILCS 5/12-12(f) (West 2010).[5]

[4] Renumbered as 720 ILCS 5/11-1.20(a)(1).

[5] Renumbered as 720 ILCS 5/11-0.1.

¶ 42 In contrast, one commits criminal sexual abuse when that person commits an act of "sexual conduct" by threat of a dangerous weapon. 720 ILCS 5/12-15(a)(1) (West 2010); 720 ILCS 5/12-16(a)(1) (West 2010). Sexual conduct means:

> "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 […] for the purpose of sexual gratification or arousal of the victim or the accused." 720 ILCS 5/12-12(e) (West 2010).

¶ 43 So here, the difference between "sexual penetration" and "sexual conduct," and thus the difference between criminal sexual assault and criminal sexual abuse, is whether defendant's finger intruded inside A.W.'s vagina or whether he merely touched or fondled her vagina.

¶ 44 The evidence clearly showed that defendant inserted his fingers inside A.W.'s vagina. She so testified multiple times. She did not equivocate in any way. She typically described it as defendant "sticking his fingers up in me" and variations of that image. Nothing that A.W. said, in her many descriptions, could be remotely construed as defendant merely fondling her genitals or touching them.

¶ 45 Defendant's only argument is that her testimony was not corroborated. We have already explained that a sexual assault victim's testimony need not be corroborated, and we can find absolutely nothing in the record to support the notion that all defendant did was touch or fondle A.W.'s vagina. We reject this argument.

¶ 46 We hold that the State presented sufficient evidence to convict defendant beyond a reasonable doubt of aggravated criminal sexual assault.

¶ 47 B. Mittimus Correction

¶ 48 In addition to his sentence on aggravated criminal sexual assault, the trial court sentenced defendant to eight years on home invasion with a 15-year firearm enhancement, plus a 23-year sentence to be served concurrently for armed robbery. The mittimus shows 5 home-invasion

convictions, despite the trial court's merger of counts 2 through 5 into count 1. The mittimus also lists sentences of 24 years, not 23 years as the trial court orally pronounced.

¶ 49 The parties agree that the mittimus should be corrected to reflect that the trial court sentenced him to one count of home invasion, with the other four counts of home invasion merged. The parties also agree that the mittimus should be corrected to reflect 23-year sentences for home invasion and armed robbery, instead of the 24-year sentences written incorrectly on the mittimus. Whether the mittimus should be corrected is a question of law we review *de novo*. *People v. Carlisle*, 2015 IL App (1st) 131144, ¶ 86.

¶ 50 The one-act, one-crime rule prohibits multiple convictions where more than one offense is based on the same physical act. *People v. Crespo*, 203 Ill. 2d 335, 340 (2001). Where multiple convictions are based on the same act, they merge with one another. See, *e.g.*, *People v. Gordon*, 378 Ill. App. 3d 626, 642 (2007). And while a written order evidences the judgment of the trial court, the judge's oral pronouncement is the actual judgment of the court. *Carlisle*, 2015 IL App (1st) 131144, ¶ 87. Where the two are in conflict, the oral pronouncement controls. *Id*.

¶ 51 We agree with the parties that defendant's mittimus should reflect the merger of counts 2 through 5 into count 1. And the sentences for home invasion and armed robbery should be corrected to reflect 23-year sentences, per the trial court's oral pronouncement. We order the clerk of the circuit court to correct the mittimus accordingly.

¶ 52 III. CONCLUSION

¶ 53 For the reasons stated, we affirm defendant's conviction and order the mittimus corrected.

¶ 54 Conviction affirmed; mittimus corrected.