2013 IL App (4th) 110751-U

NO. 4-11-0751

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 13, 2013
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff–Appellee,	)	Circuit Court of
v.	)	Macon County
DARRIOUS R. JOHNSON,	)	No. 10CF1286
Defendant–Appellant.	)	
	)	
	)	Honorable
	)	Lisa Holder White,
	)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Appleton and Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed in part and reversed in part, (1) rejecting the defendant's claim that the State failed to prove him guilty of criminal sexual assault beyond a reasonable doubt and (2) concluding that the trial court erred by improperly calculating and imposing several of the defendant's fines and fees.

¶ 2 In August 2010, the State charged defendant, Darrious R. Johnson, with criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2008)). Following a two-day bench trial conducted in May and June 2011, the trial court found defendant guilty of that charge. The court later sentenced defendant to 10 years in prison.

¶ 3 Defendant appeals, arguing that (1) the State failed to prove him guilty beyond a reasonable doubt and (2) several of his fines and fees were improperly calculated or imposed. We affirm defendant's conviction in part as modified, vacate in part, and remand with directions

that the trial court amend its sentencing order.

¶ 4 I. BACKGROUND

¶ 5 The evidence at defendant's bench trial showed that in September 2009, G.W. stayed late after her shift at a bar and grill to indulge in several "mixed" drinks. At approximately 3:30 a.m., an intoxicated G.W. left to drive herself home. On her way home, G.W. "blacked out" and hit a parked car. The wreck resulted in significant damage to her car, rendering it inoperable.

¶ 6 A short time later, defendant and his acquaintance, "Spud," were walking to the home defendant's sister's owned when they saw G.W. Defendant offered to assist G.W., indicating that his grandfather was a mechanic and might be able to help her. G.W. was anxious to get away from the scene because she was afraid of being arrested for driving under the influence (DUI). Unable to reach defendant's grandfather, however, the three left the scene and proceeded to a nearby apartment complex. All three entered a door of one of the apartment buildings and walked down some stairs into a laundry room. Defendant and G.W. engaged in intercourse. G.W. was positioned on "all-fours" and defendant wore a condom. "Spud" remained in the laundry room. Approximately five minutes later, defendant threw his condom into a trash can in the laundry room, and all three left. Investigators later found G.W.'s car keys on the floor of the laundry room.

¶ 7 G.W. called a taxi to take her to her friends' house. Shortly thereafter, G.W. told her friends that she had been raped and her friends called the police. During the police investigation, the police asked defendant whether he knew about a "white girl getting raped" in a laundry room. Defendant said that he did not know anything about it. The police later matched

the deoxyribonucleic acid (DNA) on a condom found in the laundry room to defendant and G.W. (An investigator would later testify that defendant (1) denied even having sex in a laundry room and (2) explained away the DNA evidence by telling him that another Darrious Johnson lived in Decatur.)

¶ 8 In August 2010, the State charged defendant with criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2008)). At a two-day bench trial on that charge, the State argued that G.W. did not consent to the intercourse, acquiescing only because she felt it would be futile to try to get away once she was in the laundry room. For his part, defendant posited that G.W. willingly engaged in intercourse with him in exchange for his help in repairing her car to avoid the consequences that were sure to follow from a DUI charge.

¶ 9 G.W. testified at trial that she walked with defendant and "Spud" to the apartment complex because she was "panicked." She was desperate to get her car fixed so that she could avoid getting into trouble for the wreck. G.W. could not recall many of the specifics of what was said, but she recalled walking into the apartment building and down a flight of stairs into a laundry room. The laundry room was dark but the hallway light was on. The prosecutor pursued her perceptions at that point, as follows:

> "[PROSECUTOR:] Okay. [H]ow did it come to be that you went into the laundry room?
>
> [G.W.:] I just — I walked in there with them. Um – at that point I knew what was happening, but I was too scared and –
>
> [PROSECUTOR:] Well, when you say you knew what was happening was that because of what someone said to you?

[G.W.:] No.

[PROSECUTOR:] What –

[G.W.:] I just had a really sick feeling like it just wasn't right.

[PROSECUTOR:] Okay.

[G.W.:] This wasn't *** a grandfather's house. This was a laundry room. It had nothing to do [with] what was going on.

[PROSECUTOR:] All right. And what happened then when you entered the laundry room?

[G.W.:] I don't remember exactly, but I remember I was told to get down."

¶ 10 G.W. continued that she pulled down her pants and underwear and was on her hands and knees when she "heard a snap like latex hitting skin." At that point, she "literally froze." She said that defendant penetrated her vagina with his penis from behind. When it was "over," she pulled up her pants and went "running out of the room." She ran to her car. Defendant and "Spud" saw her in her car, and when they made eye contact with her, "[t]hey started running." G.W. said that she did not agree to have sex with defendant.

¶ 11 On cross-examination, G.W. denied telling defendant that she would "do anything for [him] to help [her] get out of [the] situation." G.W. also acknowledged that neither defendant nor "Spud" threatened her with physical harm and that she was the one who pulled her pants down. G.W. reiterated, however, that she was told to "get down."

¶ 12 Defendant testified in his own defense, explaining that he approached G.W. at the

scene of the wreck to determine what was wrong and whether he could assist her. They began talking about how he could help her, and he mentioned that his grandfather was a mechanic. He said that G.W. was afraid the police were going to come, which is "what led up to [their] going in the back of the building." G.W. told him that she did not have money to get her car fixed and that she was mad because he could not get in touch with his grandfather. Defendant explained that G.W. asked him whether "there was any other way [he] could help her." She said, "Is there anything else that [he] could do or she could do[; s]he said whatever it [was] besides money, she was willing to do it." At that point, they went to the laundry room.

¶ 13 Defendant further testified that he did not force her into having intercourse with him; she wanted to do it in exchange for his assistance in fixing her car. They tried to have intercourse while standing up but quickly determined that she had to get down on her hands and knees. She did not say anything while they were engaging in intercourse, and only got upset after she realized that he was not going to be able to help her fix her car. Defendant added that she did not run from the laundry room. Instead, the group walked out of the room together—indeed, he tried to help her locate her purse. He said that he did not assist investigators when they asked about the rape in a laundry room because "it didn't click in [his] head" because he did not rape anyone.

¶ 14 On this evidence, the trial court found defendant guilty of criminal sexual assault. Following a July 2011 sentencing hearing, the court sentenced defendant to 10 years in prison.

¶ 15 This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 Defendant argues that (1) the State failed to prove him guilty beyond a

reasonable doubt and (2) several of his fines and fees were improperly calculated and imposed. We address defendant's contentions in turn.

¶ 18 A. Defendant's Challenge to the Sufficiency of the Evidence

¶ 19 Defendant contends that the State failed to prove him guilty beyond a reasonable doubt. Specifically, defendant asserts that because he "did not do or say anything to make G.W. believe she was going to be forced to have sex," the State's evidence was insufficient to prove that he committed an act of sexual penetration by use of force or threat of force. We disagree.

¶ 20 1. *Criminal Sexual Assault and the Standard of Review*

¶ 21 As charged in this case, an accused commits criminal sexual assault when he "commits an act of sexual penetration by the use of force or threat of force." 720 ILCS 5/12-13(a)(1) (West 2008).

¶ 22 We review a challenge to the sufficiency of the State's evidence under the familiar refrain that we must view the evidence in the light most favorable to the prosecution to decide whether *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Price*, 2011 IL App (4th) 100311, ¶ 16, 958 N.E.2d 341. In so doing, we must draw all reasonable inferences from the record in favor of the prosecution. *Id.* "This same standard of review applies regardless of whether the evidence is direct or circumstantial." *People v. Cooper*, 194 Ill. 2d 419, 431, 743 N.E.2d 32, 40 (2000). Indeed, we will not overturn a criminal conviction " 'unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt.' " *Price*, 2011 IL App (4th) 100311, ¶ 16 (quoting *People v. Givens*, 237 Ill. 2d 311, 334, 934 N.E.2d 470, 484 (2010)). In reaching its verdict, the fact finder is not required to "(1) disregard inferences that flow normally from the

evidence presented or (2) search out all possible explanations consistent with innocence and raise them to the level of reasonable doubt." *People v. Pelo*, 404 Ill. App. 3d 839, 881, 942 N.E.2d 463, 498 (2010).

¶ 23 2. *The State's Evidence in This Case*

¶ 24 Here, viewed in the light most favorable to the prosecution, drawing all reasonable inferences from the record in the State's favor, the evidence showed that G.W. stayed late after her shift at a bar and grill and became very intoxicated. On her way home, G.W. "blacked out" and hit a parked car, which rendered her car inoperable. Defendant and his acquaintance, "Spud," came upon the wreck and asked G.W. whether she needed any help. After attempting to reach his grandfather and determining that he could not repair G.W.'s car, defendant walked with "Spud" and G.W. to a nearby apartment complex. Once there, defendant led G.W. down to the basement laundry room of one of the apartment buildings. At that point, defendant, recognizing G.W.'s trepidation, ordered her onto the floor. Knowing that she had no choice but to acquiesce, G.W. pulled down her pants and underwear. Defendant penetrated G.W.'s vagina with his penis. When defendant finished, G.W. ran out of the laundry room, leaving her car keys in her haste. After seeking refuge in her car, G.W. made eye contact with defendant and "Spud," at which point the two men fled.

¶ 25 This evidence was sufficient to prove beyond a reasonable doubt that defendant committed an act of sexual penetration by the threat of force. See *People v. Denbo*, 372 Ill. App. 3d 994, 1005, 868 N.E.2d 347, 355-56 (2007) (in this context, threat of "force" means threat of physical compulsion that causes the victim to submit to the sexual penetration against her will). The trial court, as fact finder, had the opportunity to evaluate the witnesses—who had differing

accounts of what transpired— and it found G.W.'s testimony more credible than defendant's. See *People v. Wheeler*, 226 Ill. 2d 92, 114-15, 871 N.E.2d 728, 740 (2007) (the reviewing court affords "great deference" to the trial court's findings at a bench trial, given that it is "best equipped to judge the credibility of the witnesses" because the court saw and heard the witnesses).

¶ 26 Accordingly, in light of our deferential standard of review, we reject defendant's claim that the State failed to prove him guilty beyond a reasonable doubt.

¶ 27 B. Defendant's Claim That Several of His Fines and Fees Were Improperly Imposed or Calculated

¶ 28 Defendant next contends that several of his fines and fees were improperly calculated or imposed. Specifically, defendant asserts that (1) because the trial court sentenced him to prison rather than probation, his $10 anti-crime fee must be vacated as void; (2) because his youth-diversion, child-advocacy, and violent-crimes-assistance-fund assessments were imposed by a nonjudicial body, those assessments should be vacated; (3) because defendant was incarcerated for 327 days prior to sentencing, he is entitled to $5 per day credit against his $5 youth-diversion and $14.25 child-advocacy fines; and (4) because defendant was assessed other fines, his violent-crime-victims-assistance-fund fine was improperly calculated. The State concedes each of defendant's contentions in this regard, and we accept the State's concessions.

¶ 29 Here, the trial court sentenced defendant to prison rather than probation. Thus, defendant's $10 anti-crime fee must be vacated. See *People v. Beler*, 327 Ill. App. 3d 829, 837, 763 N.E.2d 925, 931 (2002) (vacating as void $25 anti-crime fee because the trial court sentenced the defendant to prison rather than probation).

¶ 30 Moreover, defendant's youth-diversion, child-advocacy, and violent-crimes-assistance-fund assessments were imposed by a nonjudicial body and, therefore, those assessments must also be vacated. See *People v. Shaw*, 386 Ill. App. 3d 704, 710, 898 N.E.2d 755, 762 (2008) (such assessments must be imposed by the trial court rather than the circuit clerk) (citing *People v. Swank*, 344 Ill. App. 3d 738, 747-48, 800 N.E.2d 864, 871 (2003).

¶ 31 Further, the record shows that defendant was incarcerated for 327 days prior to sentencing and, therefore, he is entitled to $5 per day credit against his $5 youth-diversion and $14.25 child-advocacy fines. See 725 ILCS 5/110-14 (West 2008) (authorizing the $5 credit for persons incarcerated on a bailable offense).

¶ 32 Finally, because defendant was assessed other fines, his violent-crime-victims-assistance-fund fine was improperly calculated. Defendant should have been assessed an additional $4 fine for each $40, or fraction thereof, of the fines imposed. See 725 ILCS 240/10(b) (West 2008) (outlining the calculation for determining a defendant's violent-crime-victims-assistance-fund fine).

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm defendant's conviction in part as modified, vacated in part and cause remanded with directions for the trial court to amend its sentencing order in accordance with this decision. As the State successfully defended the appeal in part, we award it its $75 statutory assessment against defendant as costs of this appeal.

¶ 35 Affirmed in part as modified; vacated in part, and cause remanded with directions.