

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

2012 IL App (4th) 110596-U

NO. 4-11-0596

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 6, 2012
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from
Plaintiff-Appellee,)	Circuit Court of
v.)	Pike County
DAVID A. PATTIN,)	No. 09CF60
Defendant-Appellant.)	
)	Honorable
)	Diane M. Lajoski,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Pope and Knecht concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court held the State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt of aggravated criminal sexual abuse.

¶ 2 On May 19, 2009, the State charged defendant, David A. Pattin, by information with aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2008)). The information alleged on May 3, 2009, defendant committed an act of sexual conduct with M.W. (born September 8, 2002), who was under 18 years of age when the act was committed, in that defendant rubbed M.W.'s buttocks for the purpose of sexual arousal. In May 2011, after a bench trial, the trial court found defendant guilty of aggravated criminal sexual abuse, and in June 2011 sentenced him to 48 months' probation, with a condition of 180 days in jail.

¶ 3 On appeal, defendant argues the State did not present sufficient evidence to prove he rubbed M.W.'s buttocks for the purpose of sexual arousal. We disagree.

¶ 4

I. BACKGROUND

¶ 5 In September 2010, defendant pleaded guilty and the trial court, Judge Michael Roseberry presiding, conditionally accepted the plea agreement between defendant and the State. In November 2010, defendant filed a motion to withdraw his plea, asserting he did not believe he is guilty. After the motion was filed, defendant's private counsel withdrew and the public defender was appointed to represent defendant. In February 2011, the court denied the motion to withdraw plea, finding defendant's plea was knowing and voluntary and not based on a material mistake of fact. In March 2011, at the sentencing hearing, the court rejected the plea agreement and the case was reassigned to Judge Diane Lagoski. In April 2011, the court, Judge Lagoski presiding, allowed defendant to withdraw his guilty plea due to Judge Roseberry's rejection of the plea agreement. See Ill. S. Ct. R. 402(d)(2) (eff. July 1, 1997).

¶ 6 In May 2011, the trial court held a bench trial. The State presented testimony from Crystal Vincent, defendant's former girlfriend and mother of his child, D.P. (born November 12, 2007). Vincent is M.W.'s mother. Kevin Kaufmann, a special agent with the Illinois State Police, testified as to defendant's statements confessing the crime. Their testimony is discussed in detail below. The trial court found defendant guilty. In June 2011, the court found defendant eligible for probation pursuant to section 5-5-3(e) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-5-3(e) (West 2008)) and sentenced him as stated. This appeal followed.

¶ 7

II. ANALYSIS

¶ 8 When this court reviews a conviction for sufficiency of the evidence, it must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.

People v. Beauchamp, 241 Ill. 2d 1, 8, 944 N.E.2d 319, 322-23 (2011). "This means that we 'must allow all reasonable inferences from the record in favor of the prosecution.'" *Beauchamp*, 241 Ill. 2d at 8, 944 N.E.2d at 323 (quoting *People v. Cunningham*, 212 Ill. 2d 274, 280, 818 N.E.2d 304, 308 (2004)). The trier of fact has the responsibility to determine the credibility of witnesses and the weight given to their testimony, and to draw reasonable inferences from that evidence. *People v. Burney*, 2011 IL App (4th) 100343, ¶ 25, 963 N.E.2d 430, 437 (citing *People v. Jackson*, 232 Ill. 2d 246, 281, 903 N.E.2d 388, 406 (2009)). This court "will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *People v. Campbell*, 146 Ill. 2d 363, 375, 586 N.E.2d 1261, 1266 (1992).

¶ 9 In Illinois, "proof of an offense requires proof of two distinct propositions or facts beyond a reasonable doubt: (1) that a crime occurred, *i.e.*, the *corpus delicti*; and (2) that the crime was committed by the person charged." *People v. Sargent*, 239 Ill. 2d 166, 183, 940 N.E.2d 1045, 1055 (2010). "[P]roof of the *corpus delicti* may not rest exclusively on a defendant's extrajudicial confession, admission, or other statement." *Id.* Where a defendant's confession is part of the proof that the crime occurred, "the prosecution must also adduce corroborating evidence independent of the defendant's own statement." *Id.* The corroboration requirement demands some evidence "tending to show the crime did occur" but need not "by itself, prove the existence of the crime beyond a reasonable doubt." *Id.* "If the defendant's confession is corroborated, the corroborating evidence may be considered together with the confession to determine whether the crime, and the fact the defendant committed it, have been proven beyond a reasonable doubt." *Id.*

¶ 10 The evidence in the light most favorable to the prosecution shows defendant committed the physical act of rubbing M.W.'s buttocks. Kaufmann, a special agent with the Illinois

State Police, testified he transported defendant to the Illinois State Police district headquarters. Before transport, Kaufmann informed defendant of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966). During transport, defendant engaged in conversation with Kaufmann. Defendant said he had done "something wrong" and Kaufmann asked to what he was referring. Defendant replied he touched M.W.'s buttocks. Kaufmann asked if there was penetration, and defendant replied there had not been. Once at district headquarters, Kaufmann moved defendant into an interview room. There, defendant told Kaufmann around 12:30 a.m. on May 3, 2009, he went inside the house after being outside burning trash. He saw M.W. asleep on the couch in the living room wearing a long T-shirt and underwear. She was lying asleep on her left side facing the couch in a partial fetal position. Defendant sat down on the floor next to her and began rubbing her buttocks on the outside of her clothes. He did this for approximately a minute and a half. Defendant stopped when Vincent walked into the living room. Vincent asked what he was doing; he told her he did not know and walked into another room.

¶ 11 Defendant's confession is corroborated by Vincent's testimony. Vincent testified she and the defendant were in a dating relationship for three years. She and defendant lived together for approximately two years and had a child, D.P., together. Vincent's daughter, M.W., also lived in the home. On Saturday, May 2, 2009, Vincent and the children were outside while defendant burned trash. Defendant purchased a 12-pack of beer and was drinking. At approximately 10:30 to 11 p.m., Vincent took the children inside to put them to bed. Vincent allowed M.W. to sleep on the couch as the air conditioning in her bedroom was not working properly. M.W. was wearing a nightgown and underwear without pajama pants or shorts. Vincent testified some time went by before she heard the back door shut. Defendant did not immediately come into the bedroom. Vincent then got up to

use the bathroom. As she walked toward the bathroom, she saw defendant "slouched down" beside M.W. like in a baseball catcher's position. She asked him what he was doing and defendant responded "he was tucking her in." M.W. was asleep on the couch facing the couch with her back toward the room. Vincent testified she saw one of defendant's hands up by M.W.'s head and the other one beside his leg. Vincent asked why defendant was tucking M.W. in, and defendant said she was "uncovered." Defendant then stood up and got something to drink. He told her, in slurred speech, he had done something bad and she would not forgive him. Vincent testified she wears glasses and was not wearing them when she saw defendant next to M.W.

¶ 12 Vincent's testimony corroborated key factual details of defendant's confession, including (1) the time of day the incident occurred, (2) M.W.'s position on the couch, (3) what M.W. was wearing, (4) defendant's location next to M.W. when Vincent walked in, (5) defendant had his hands on and near M.W., and (6) his actions and demeanor after being interrupted, including saying he had done something wrong. Vincent did not testify she actually saw defendant's hand rubbing M.W.'s buttocks, but her testimony need only tend to show the act occurred and not prove the crime. The trier of fact could reasonably infer defendant quickly removed his hand from M.W.'s buttocks without Vincent seeing.

¶ 13 Defendant next argues the evidence did not show his conduct was for the purpose of sexual arousal. Defendant contends this element was not proved since (1) he told Kaufmann something worse "could" have happened rather than "would" have happened, (2) he told Vincent he did not know what he was doing, and (3) he did not admit he was sexually aroused when he rubbed M.W.'s buttocks. Defendant's argument is unpersuasive.

¶ 14 Section 12-12(e) of the Criminal Code of 1961 defines "[s]exual conduct" as

"knowing touching or fondling *** either directly or through clothing, of *** any part of the body of a child under 13 years of age *** for the purpose of sexual gratification or arousal of the victim or the accused." 720 ILCS 5/12-12(e) (West 2008).

¶ 15 Kaufmann testified, during the interview, defendant admitted having had "thoughts" about M.W. for approximately six months. He had never really had an opportunity to be alone with her, but that night an opportunity presented itself and, as defendant said, "My dumb ass opened the door and walked in." Defendant told Kaufmann had Vincent not come into the room something worse "could have happened." He told Kaufmann he "hadn't gone around front yet" and expressed he could have penetrated M.W. and taken away her "innocence." Defendant indicated he did not think he would have used his penis for penetration. Defendant stated he did not have an erection at the time.

¶ 16 Defendant asserts his statement to Kaufmann something worse "could" have happened if Vincent had not walked in shows he "was not even sure that he would have gone further, and eventually become sexually aroused." Section 12-12(e) does not require defendant to have actually achieved sexual arousal. The fact defendant did not achieve sexual arousal, however determined, is immaterial.

¶ 17 Defendant's argument the purpose of his conduct was not for sexual arousal is undone by his own words. Defendant told Kaufmann (1) he had "thoughts" about M.W. for approximately six months prior to the incident and he had never had an opportunity to be alone with her; (2) he rubbed M.W.'s buttocks for a minute and a half; (3) he "hadn't gone around front yet," implying he would have touched M.W.'s vaginal area; and (4) had Vincent not come into the room, he may have even penetrated M.W. and taken her "innocence" away. Additionally, defendant told both Kaufmann

and Vincent something bad had happened, indicating he knew his rubbing was not acceptable. The evidence supports a finding defendant's conduct was for the purpose of sexual arousal as his statements indicate (1) he entertained sexual fantasies of a six-year-old child for a prolonged period and took the opportunity when it first presented itself; (2) his rubbing continued for an extended period of time, under circumstances implying it was not to comfort the child; (3) had Vincent not walked in, his molestation may have escalated to another level; and (4) he may have taken away M.W.'s "innocence" by penetration. Defendant's own statement he had done something wrong shows he knew his conduct is unacceptable and reveals his depraved purpose. A reasonable trier of fact could conclude his actions were not to enhance a child's sleep but to seek sexual arousal and fulfill a sexual purpose. The evidence in the light most favorable to the State shows defendant's purpose was for sexual arousal.

¶ 18 We reject defendant's assertion "his statement that he would have killed himself if he actually had abused the minor clearly indicated that while he could have abused the minor, if []he was not interrupted, he did not abuse the minor since, of course, he did not kill himself."

¶ 19 III. CONCLUSION

¶ 20 For the foregoing reasons, we affirm the trial court's judgment. As part of our judgment, we award the State its \$50 statutory assessment pursuant to section 4-2002 of the Counties Code (55 ILCS 5/4-2002 (West 2010)) against defendant as costs of this appeal.

¶ 21 Affirmed.