

No. 1-12-2564

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).

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. 10 CR 5342
)	
GEORGE WATTS,)	Honorable
)	Kenneth J. Wadas,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE PALMER delivered the judgment of the court.
Justices Gordon and Taylor concurred in the judgment.

ORDER

- ¶ 1 *Held:* Judgment entered on defendant's conviction for criminal sexual assault affirmed over claim that evidence was insufficient to sustain it; mittimus corrected.
- ¶ 2 Following a jury trial, defendant George Watts was convicted of two counts of criminal sexual assault and two counts of aggravated criminal sexual abuse. The trial court sentenced him to consecutive terms of 15 years' imprisonment for each count of criminal sexual assault, and to

concurrent terms of 14 years' imprisonment for each count of aggravated criminal sexual abuse. On appeal, defendant challenges the sufficiency of the evidence as to one count of criminal sexual assault. In particular, he contends that this court should reduce that conviction to aggravated criminal sexual abuse because the State failed to prove that an act of sexual penetration occurred between his penis and the victim's anus. He further requests that we amend his mittimus to reflect the correct amount of presentence credit to which he is entitled.

¶ 3 The charges against defendant stemmed from incidents that occurred between him and his biological daughter, O.W., in their home between January 2008 and February 2010, when O.W. was between the ages of 14 and 16. At trial, O.W. testified, in relevant part, that defendant is her father and her mother is Audrey W. Although O.W. currently lives with Audrey, DCFS removed her from Audrey's home when she was five years old, at which time she lost contact with defendant. When O.W. returned to live with Audrey at age 10, she requested contact with defendant, who no longer lived with Audrey, and reestablished contact with him when she was 13. Their visits progressed from being held in public places, to being held in the home she shared with Audrey, and defendant moved in with them in 2008, when O.W. was 14 years old.

¶ 4 O.W. further testified that after he moved in, defendant began to enter her bedroom and get into bed with her in the mornings after driving Audrey to work. At first he would only hug her from behind, but subsequently progressed to touching O.W.'s legs with his hands, then to "grinding" on her, meaning that he was rubbing his erect penis against her "butt" while they were both fully clothed. On subsequent mornings, defendant began trying to take O.W.'s pants off her, but initially failed to do so because she struggled with him. Defendant eventually succeeded in pulling down her pants, and, as part of his morning routine, began to get on top of her and touch his erect penis to her vagina. Although defendant initially did this while he was still

wearing pants, he progressed to doing so when neither one of them was wearing pants, and O.W.'s attempts to fight him off were unsuccessful. When asked if defendant ever touched his penis to another part of her body when neither one was wearing clothes, O.W. stated "no."

¶ 5 O.W. further testified regarding her outcries to Audrey and two other relatives regarding these incidents, as well as details regarding her meetings with police and representatives from DCFS, to whom she initially denied that defendant was doing anything to her because she was afraid that she would once again be taken away from Audrey. O.W. testified that defendant drove her to one of those meetings and asked her to lie. On cross-examination, O.W. testified that she was examined by Dr. Nuha Shair on March 5, 2010, at which time she told the doctor that defendant had sex with her "in the front and in the back" and pointed to her crotch and her butt. On re-direct examination, O.W. testified that defendant also put his erect penis against her butt when they were both unclothed, and that it felt uncomfortable.

¶ 6 Audrey W. testified and corroborated O.W.'s testimony regarding her living situation and contact with her father during her childhood and adolescence. Audrey added that she was previously married to defendant and they divorced in 2003, but he moved back into her home in 2008. About a year later, O.W. told her that defendant had hugged her in an improper way, and after Audrey confronted him, he apologized to both of them. Audrey subsequently overheard O.W. telling defendant to stop getting in bed with her. Audrey corroborated the details of O.W.'s outcry to her relatives, and testified that when she confronted defendant about the incidents, he said that he was sorry, but did not specify what he was sorry about. Audrey testified that she was present when defendant asked O.W. to lie to authorities about the incidents. Audrey initially did not tell authorities the truth about what was going on because she was afraid that O.W. would be taken away from her again.

¶ 7 Deborah Williams testified that she is related to O.W. and that O.W. made an outcry to her and her daughter Doris in February 2010. Williams then informed Audrey about it and O.W. subsequently began to live with Williams after DCFS became involved in the situation.

¶ 8 Dr. Nuha Shair testified that she examined O.W. on March 5, 2010. On that date, O.W. told her that defendant had sex with her more than 10 times, that it was from the front and the back, and pointed to her vaginal area and to her "butt." O.W. informed her that the last incident occurred four weeks prior. Dr. Shair examined O.W.'s genital and anal area, which reflected a normal exam, meaning that at that point in time, she did not see any lesions, bruising, tears, disruptions or signs of trauma. Many variables, including timing, may explain why a normal exam would not confirm or refute sexual abuse. In this case, O.W. stated that the last time defendant had sex with her was four weeks ago, and it is possible for there to be a healing process in that amount of time for a girl of O.W.'s age. In Dr. Shair's experience, 95 percent of children who are examined due to allegations of sex abuse have normal results, but that does not mean that they were not abused.

¶ 9 On cross-examination, Dr. Shair was asked if O.W. told her that defendant had rubbed his penis on her anus, and she responded that "[O.W.] mentioned her behind. Exactly, the exact details of levels of penetration, rubbing or - - I don't know." Dr. Shair then confirmed that O.W. told her that defendant had sex with her.

¶ 10 The jury found defendant guilty of two counts of criminal sexual assault and two counts of aggravated criminal sexual abuse. On appeal from that judgment, defendant contends that the evidence was insufficient to prove him guilty beyond a reasonable doubt of the count of criminal sexual assault which alleged that an act of sexual penetration occurred between his penis and

O.W.'s anus. He thus requests that we reduce his conviction to the lesser included offense of aggravated criminal sexual abuse and remand his cause for resentencing on the reduced charge.

¶ 11 The standard of review on the sufficiency of the evidence is 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. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009). This standard applies to all criminal cases, whether the evidence is direct or circumstantial, and acknowledges the responsibility of the trier of fact to determine the credibility of the witnesses, to weigh the evidence and draw reasonable inferences therefrom, and to resolve any conflicts in the evidence. *People v. Campbell*, 146 Ill. 2d 363, 374-75 (1992). A reviewing court will not reverse a conviction unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *People v. Jackson*, 232 Ill. 2d 246, 281 (2009).

¶ 12 Here, to sustain defendant's conviction of criminal sexual assault, the State was required to show that defendant committed an act of "sexual penetration" with a victim who was a family member and who was under the age of 18 when the act was committed. 720 ILCS 5/12-13(a)(3) (West 2008). Defendant only contests the sufficiency of the evidence to prove the "sexual penetration" element of this offense. Sexual penetration is defined, in pertinent part, as "any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person, ***" 720 ILCS 5/12-12(f) (West 2008).

¶ 13 Defendant contends that the State failed to show that there was any contact between his penis and O.W.'s anus. Specifically, defendant maintains that O.W.'s testimony that defendant's erect penis was against "her butt" was too vague to prove that he committed an act of sexual

penetration in relation to O.W.'s anus beyond a reasonable doubt, and merely showed that his penis made contact with O.W.'s general buttocks area. We disagree.

¶ 14 O.W. testified that defendant put his erect penis against her butt when neither one of them were wearing clothes, and that it felt uncomfortable. O.W. also testified that she told Dr. Shair that defendant had sex with her "from the front and the back," and pointed to her vaginal area and her butt when she made this statement. Dr. Shair confirmed that O.W. made this statement while pointing to those areas of her body, and also testified that O.W. told her that defendant had sex with her more than 10 times. Although, as defendant points out, Dr. Shair testified that she did not know the details of the level of penetration, the fact remains that Dr. Shair confirmed that O.W. told her that defendant had sex with her not just from the front, but also "from the back," and pointed to her butt to illustrate her meaning. In viewing this evidence in the light most favorable to the State (*Siguenza-Brito*, 235 Ill. 2d at 224), we find that it supports the inference that defendant's penis made "any contact, however slight," with O.W.'s anus.

¶ 15 In reaching this conclusion, we find that this case is similar to *People v. Atherton*, 406 Ill. App. 3d 598 (2010). In *Atherton*, the defendant was convicted of, *inter alia*, predatory criminal sexual assault based on contact between his penis and the victim's anus. *Atherton*, 406 Ill. App. 3d at 602, 608. At trial, the victim did not specifically refer to her anus, but rather, testified that the defendant put his penis "kind of in [her] butt," that she "poops" with her butt, and that he "didn't put it exactly in where [she] poop[s]." *Atherton*, 406 Ill. App. 3d at 609. On appeal, the reviewing court addressed whether the evidence presented was sufficient to show that "any contact, however slight" occurred between the defendant's penis and the victim's anus, which would establish the requisite element of sexual penetration, and found that although the victim's testimony was seemingly contradictory, it was sufficient to prove the defendant guilty beyond a

reasonable doubt. *Atherton*, 406 Ill. App. 3d at 608-09. In doing so, the court distinguished *People v. Oliver*, 38 Ill. App. 3d 166 (1976), relied upon by defendant here, on the basis that the victim in that case made a single reference to "in [her] butt" and had previously characterized the defendant's conduct as his penis having merely gone along her "cheeks." *Atherton*, 406 Ill. App. 3d at 609-10. Here, as in *Atherton*, although O.W. did not specifically refer to her anus, she did not limit her testimony to a sole reference to her "butt," and did not at any point describe defendant's conduct as his penis having merely gone along her cheeks. Further, the evidence at issue here is stronger than that in *Atherton* in that O.W.'s testimony was not "seemingly contradictory."

¶ 16 In sum, in viewing the evidence presented, and the reasonable inferences drawn therefrom, in the light most favorable to the State (*Siguenza-Brito*, 235 Ill. 2d at 224), we find that it was sufficient to allow the jury to conclude that defendant's penis made "any contact, however slight," with O.W.'s anus (*Atherton*, 406 Ill. App. 3d at 609), and he was thus properly found guilty of criminal sexual assault beyond a reasonable doubt. In light of this determination, we need not address defendant's argument regarding the propriety of reducing his conviction to a lesser included offense.

¶ 17 Defendant next contends, the State concedes, and we agree that he is entitled to credit for 896 days he spent in pretrial custody. Defendant is entitled to receive credit for each day spent in pretrial custody, excluding the day the mittimus is issued. 730 ILCS 5/5-4.5-100(b) (West 2012); *People v. Williams*, 239 Ill. 2d 503, 509 (2011). Here, defendant is entitled to 896 days' credit because he was arrested on February 26, 2010, and remained in custody until he was sentenced on August 10, 2012. Here, although the mittimus indicates that defendant is entitled to

"credit for time served," it does not reflect the number of days of credit defendant is entitled to receive.

¶ 18 Pursuant to Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999), and our authority to correct a mittimus without remand (*People v. Rivera*, 378 Ill. App. 3d 896, 900 (2008)), we direct the clerk of the circuit court to correct the mittimus to reflect 896 days of presentence custody credit.

¶ 19 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County.

¶ 20 Affirmed; mittimus corrected.