

No. 1-13-1263

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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 18412
)	
ROY FLUKER,)	Honorable
)	Matthew E. Coghlan,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LIU delivered the judgment of the court.
Presiding Justice Simon and Justice Pierce concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for criminal sexual assault affirmed over contention that evidence was insufficient because the complaining witness lacked credibility.

¶ 2 Following a bench trial, defendant Roy Fluker was found guilty of criminal sexual assault and sentenced to 12 years in prison. On appeal, defendant contends that the evidence was insufficient to prove him guilty of the offense because the complaining witness lacked credibility and there was no physical evidence of assault. He thus requests this court to reverse his conviction.

¶ 3 The charges in this case arose from an incident that occurred in an apartment on the northwest side of Chicago on June 20, 2010, when 33-year-old defendant allegedly sexually assaulted 17-year-old victim, A.S.

¶ 4 A.S. testified that on June 19, 2010, she attended a party near Crystal and Division Streets with defendant, whom she had known for about one month. About midnight, defendant picked her up in his car from her friend's house and drove her and two unknown males to the party. Approximately half an hour later, A.S. left the party to pick up her friend, Deseray, at a bus stop nearby. As the duo walked back, they saw people running towards them, who informed them that a fight had broken out at the party and shots had been fired. A.S. saw a girl she knew driving by her, and she and Deseray jumped in the girl's car. A.S. realized that she did not have her mobile phone with her, so she called her number from her friend's phone, and defendant answered it and told her he had the phone.

¶ 5 The girl dropped A.S. and Deseray off on Crystal Street, and the duo walked down the block to retrieve her phone from defendant. When they reached him, defendant denied having her phone, but then told her that it was in the car. A.S. walked to the car and looked inside, but she did not see it. She told defendant that she did not care about the phone and was leaving, and then walked away with Deseray.

¶ 6 As they walked up the street, defendant drove his car towards them and exited. A.S. noticed that defendant's eyes were bloodshot red, and he told her that she could not leave, that she came to the party with him, so she had to stay with him, and that "he wanted what he wanted." He also stated that if A.S. did not get in the car, he would have the people on the corner shoot her. A.S. was scared and told Deseray to call the police because she thought something

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was going to happen. She and Deseray then got into defendant's car with defendant and an unknown boy. They drove the car around the block, and defendant exited to talk to some people. At that time, A.S. was crying, and the boy, who was still seated in the car, gave A.S.'s phone back to her.

¶ 7 Defendant then got back in the car, and dropped Deseray and the boy off, and drove toward Austin Boulevard. A.S. testified that during that time, defendant was fighting with her and took her phone and put it in his armrest. He stopped the car near an apartment, and when he exited the car, A.S. tried to lock the doors, but he unlocked the car from outside. He then fought her and pulled her out of the car, as A.S. cried and told him she "didn't want to do it." She testified that she tried to run and fight back, but he grabbed her and punched her in the back and stomach. Defendant continued to grab her as they went up the stairs to his building. When they reached the door, A.S. attempted to run again, but he punched her. Once they were inside the house, A.S. "just gave up." The television was on, but she did not see anyone in the house, and defendant walked behind her towards a room at the back of the apartment. Defendant told A.S. to sit down on the bed in the room, she complied, and he started removing her clothes, even though she did not want him to. A.S. testified that he then took his clothes off, got on top of her, put his penis into her vagina and had sex with her. A.S. repeatedly asked him to stop and get off her, but he continued having sex with her until he ejaculated, and then he rolled over and went to sleep.

¶ 8 A.S. hurriedly grabbed her clothes and ran out of the house towards North Avenue, and kept running until she saw someone she knew in a van stopped at a traffic light. The person gave her a ride to her godmother's house, where A.S. was living at the time, and she ran up the stairs. Her godmother knew something was wrong, and they called the police shortly thereafter. They

met with police back on Austin Boulevard, and she told an officer that she had just been raped, and described defendant's car to him. They walked up to the car, and saw that A.S.'s phone was inside. A.S. testified that she was confused about which building she was in because she did not look back when she fled, and just kept running. After speaking with the police, she went to the hospital where a rape kit was administered to her, and then she spoke with Chicago police detective Patricia Dwyer, and gave her defendant's name. A.S. was then shown a photo array from which she identified defendant. A.S. testified that she was not dating defendant at the time, and did not consent to having a sexual relationship with him on June 19, or June 20, 2010.

¶ 9 On cross-examination, A.S. testified that she left the party to meet Deseray at approximately 12:30 a.m., she got into defendant's car around 1:30 a.m., it took them 20 minutes to drop Deseray off, another 10 minutes to drop the male off, then five to ten minutes to reach the apartment. She did not know exactly what time she got dropped off at her godmother's house, but it was early in the morning. She also stated that when defendant first followed her and threatened her to get in his car, he was not brandishing a weapon, but she felt afraid for her and Deseray's lives. A.S. did not run, and told Deseray to get in defendant's car with her. A.S. also stated that she had to be home by midnight that night, but went to the party after midnight. She testified that she did not go to the bathroom while she was in defendant's apartment and did not ask him to put a condom on. She also stated that when she reached her godmother's house, she initially told her godmother that nothing had happened, because she did not know what to do, but eventually told her that she had been raped.

¶ 10 On redirect, A.S. testified that she did not initially tell her godmother that she had been raped because she was afraid that defendant would hurt her if she told anyone what had

happened. A.S. also stated that it was "early in the morning turning into daylight" when the incident occurred and it was "daylight" when she reached her godmother's house.

¶ 11 Chicago police officer Samuel Manno testified that about 7 a.m. on June 20, 2010, he was dispatched to the 1700 block of Austin, where he met with A.S. and her godmother. He had a conversation with them, and noticed that A.S. was shaking and crying a little bit. She told Officer Manno that she had met defendant that night, and he had given her and her cousin a ride in his car, and raped her. She pointed out defendant's car, and Officer Manno saw A.S.'s cell phone inside it, lying by the center console. Officer Manno knocked on the door of the building that A.S. pointed out, 1716 North Austin Boulevard, but no one answered.

¶ 12 Chicago police detective Patricia Dwyer testified that she meet with A.S. at the Area Five police station on June 20, 2010, and A.S. told her that she was sexually assaulted by defendant. Officer Dwyer ran his name in the database and produced a photo array, and A.S. identified defendant from the array. Officer Dwyer also discovered that defendant's car, which was brought to the police station, belonged to his mother, and A.S.'s cell phone was recovered from within. On cross-examination, Officer Dwyer testified that A.S. had told her that she asked defendant to wear a condom but he refused, and that she used the bathroom in defendant's apartment.

¶ 13 Cara Shenberger testified that she was a registered nurse at West Suburban Hospital, and met with A.S. in the emergency room on the morning of the incident. A.S. informed her that defendant had raped her, and she administered a criminal sexual assault kit. The parties stipulated that A.S.'s criminal sexual assault kit and her clothing were properly inventoried, A.S.'s vaginal swabs indicated the presence of semen, defendant's buccal swabs were taken

following his arrest, and that the DNA collected from the vaginal swabs matched that of defendant's.

¶ 14 London Lewis testified on behalf of defendant that she was living at 1716 North Austin Boulevard with her brother, Michael Lewis, who was defendant's friend. Defendant would come over the apartment often, but she did not know him well. At some point after midnight in June 2010, Lewis recalled leaving her bedroom to use the washroom and found an unfamiliar woman sitting on the toilet. The woman knocked on Lewis' door moments later, asked to use her cell phone, and Lewis gave it to her and shut her bedroom door. Shortly thereafter, the woman knocked on Lewis' door again and returned the cell phone. Lewis testified that the woman did not appear to be agitated, and there was no evidence of her crying, nor did Lewis hear any unusual noises in the apartment that night. Lewis stated that some time in the evening prior to seeing the woman in the bathroom, she peeped through her bedroom door and saw defendant and her brother in the apartment talking. Later in the morning, she saw defendant again, on the couch in the front room. Lewis also testified that she heard a woman yelling outside the apartment in the morning, and when she looked out the window, she observed her brother on the street with a woman who was yelling at him, and a police officer was also present. Her brother then came inside the apartment. Lewis testified that the woman in the bathroom and the woman she saw outside that morning were not the same person.

¶ 15 On cross-examination, Lewis testified that she lived with her brother at that address for five to seven months, and she saw defendant many times inside the apartment. She also saw several unfamiliar women there, and did not know the exact date she saw the woman in the bathroom. She stated that she saw defendant and her brother in the apartment on the evening in

question. She was interviewed by a private investigator on October 3, 2011, and denied telling him that her brother was at home that evening, and stated that she did not see him, and she only saw him after the interaction with the police officer. She also described the woman in the bathroom to the investigator as being five feet six inches tall, with light brown skin, and told him that she appeared agitated. She testified that she was born on December 14, 1969, but agreed that she told the investigator that her birth year was 1978. She also testified that the woman in the bathroom and yelling outside were actually the same person.

¶ 16 Defendant testified on his own behalf and admitted to prior convictions for aggravated discharge of a firearm, possession of a weapon, possession of cannabis in a penal institution, and bringing contraband into a penal institution, but denied sexually assaulting A.S. He testified that he had known A.S. for three weeks, and on the night of the incident, he picked her up in his car and they drove to a backyard party with two of his friends. A.S. left the party briefly to "smoke a blunt" with her friend, "Diamond," and during that time, there was a shooting at the party. The party broke up, and defendant saw A.S. and Diamond in the crowd outside the party. They all got into his car, and he dropped off his two friends and Diamond first, then defendant brought A.S. to his friend's apartment. Defendant testified that A.S. did not tell him she wanted to go home, or that she did not want to go into the apartment with him. Defendant parked his car, which belonged to his mother, a block from the apartment, and he did not struggle with A.S. or drag her down the street, and she came with him willingly. He also stated that he did not take the cell phone from A.S. and that she left it in his car. The sun was coming up at the time, and defendant stated it was after 2 or 3 a.m. when they returned to the apartment. Defendant did not know if anyone was in the apartment, and he and A.S. went to the back room and had sex. A.S. asked if

he had a condom and he said he did not. He testified that he did not take off her clothes, and did not force her, brandish a weapon, or physically fight her. After having sex with A.S., he fell asleep, and that was the last time he saw her.

¶ 17 In the morning, Michael Lewis woke him up and asked him if he was fighting with a girl because a police officer was inquiring about him. Defendant then noticed that his car was missing, and after calling his mom and his aunt, he discovered that the police were looking for him. He was arrested shortly thereafter.

¶ 18 Following the arguments of counsel, the trial court found defendant guilty of criminal sexual assault. In doing so, the court specifically noted that it found the testimony of A.S. to be more credible than that of defendant based on observations of the witness's demeanor and motive. The court stated:

"I observed [A.S.] very closely. She was hesitant to even come into the courtroom. I would describe her demeanor as kind of a combination of fear and humiliation. She appeared to me to be extremely fearful of the defendant and was barely able to look in his direction. She was crying * * * The Court has to consider what motive would she have to go through the humiliation of going to the hospital, going through the sex kit physical examination, sticking to her story for the next year and a half, coming into court, facing her accuser or her attacker[.] * * * She came here, she faced the defendant in open court, and this Court found her credible. And finding her credible, I accept her version of the facts that when she said no, the defendant took it. And he threatened her in order to do so."

Defendant's motion to reconsider the finding of guilt was denied, and following arguments in mitigation, aggravation and allocution, the court sentenced defendant to 12 years in prison, followed by three years to natural life of mandatory supervised release (MSR). Defendant did not seek reconsideration of the sentence.

¶ 19 In this appeal from that judgment, defendant solely contends that the evidence was insufficient to sustain his conviction because the witness who implicated defendant, A.S., was inconsistent, impeached, and unpersuasive, and there was no other evidence to hold defendant accountable for the offense.

¶ 20 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the relevant question for the reviewing court 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. Jackson*, 232 Ill. 2d 246, 280 (2009). The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001). This court will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007).

¶ 21 Defendant was convicted of criminal sexual assault, which requires the state to prove beyond a reasonable doubt that he committed an act of sexual penetration through the use of force or threat of force. 720 ILCS 5/12-13(a)(1) (West 2010); *People v. Gray*, 214 Ill. 2d 1, 7 (2005). The testimony of a single witness, if positive and the witness credible, is sufficient to convict defendant. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). Here, A.S. testified that

defendant threatened to have her shot if she refused to get in his car. After dropping the other passengers off, defendant refused to take A.S. home. She was crying as he fought her, and he grabbed her cell phone and placed it in his armrest. When they reached his friend's apartment, he dragged her out, and punched her in the back and stomach several times. Inside the apartment, defendant undressed A.S. in the back bedroom, and had sex with her without her consent, by inserting his penis into her vagina. The results from the sexual assault kit confirmed that defendant's semen was present inside her, and A.S.'s phone was recovered from defendant's car. On this evidence, a rational trier of fact could have found defendant guilty of the offense of criminal sexual assault.

¶ 22 Defendant contends, however, that A.S. lacked credibility, because she had an unexplained fear of defendant from the outset, and despite having multiple opportunities to remove herself from defendant's presence, she failed to do so. He points to other inconsistencies in her testimony, contends that she left time unaccounted for, and was impeached about whether she asked defendant to use a condom, used the bathroom in the apartment, or knew which building defendant was staying in.

¶ 23 Defendant's assertions regarding A.S.'s fearfulness and ability to escape from his presence are belied by the record, which shows that he threatened and used physical force against A.S. and prevented her from escaping. Furthermore, in raising these various claims, he essentially requests this court to substitute its judgment for that of the trial court as to the credibility of A.S. as a witness, and believe defendant's version of events over hers. A reviewing court, however, will not reverse a conviction simply because the evidence is contradictory or because the defendant claims that a witness was not credible. *People v. Siguenza-Brito*, 235 Ill.

2d 213, 228 (2009). A trial court's findings are entitled to great weight, given that it is in the best position to judge the credibility and demeanor of the witnesses (*Wheeler*, 226 Ill. 2d at 114–15), and in this case, the trial court explicitly resolved all credibility disputes in favor of A.S. and accepted her version of the facts that "when she said no, the defendant took it," and "he threatened her in order to do so."

¶ 24 Moreover, if minor inconsistencies or discrepancies exist in the complainant's testimony but do not detract from the reasonableness of her story as a whole, the complainant's testimony may be found clear and convincing. *People v. Foley*, 206 Ill. App. 3d 709, 715 (1990). In this case, whether or not A.S. used the bathroom in defendant's apartment or asked defendant for a condom have no bearing on her story as a whole that she was sexually assaulted by defendant. Also, although A.S. was unable to give the specific time at which the offense was committed, she testified that it was "early in the morning turning into daylight" when the incident happened, and it was daylight when she reached her godmother's house. The inability to remember times merely affects the weight to be given the testimony, and taken alone, does not create reasonable doubt. *Id.*

¶ 25 Defendant next contends that Lewis was dismissed as a defense witness without basis; however, the record shows that the trial court did not find Lewis's testimony to be compelling one way or another. Lewis did not know when in June 2010 she saw the woman in her brother's apartment bathroom, and also stated that she saw many unfamiliar women in that apartment during her stay there. She testified inconsistently about whether the woman yelling outside and the woman in the bathroom were the same person, and did not conclusively identify A.S. as the

woman in the bathroom. Lewis also admitted that she misstated her birth date to the investigator who interviewed her. In light of these facts, the trial court did not dismiss her without basis.

¶ 26 Defendant also contends that in finding A.S. credible, the trial court improperly "commented on the motive of the complainant to 'go through the humiliation' of coming to court[.]" because it lacked a factual basis, and it was as reasonable for the court to infer that A.S. "started a lie * * * [that] she could not stop[.]" We disagree. The record shows that the court was presented with two conflicting versions of events. Defendant claimed that he and A.S. had consensual sex, whereas A.S. alleged that she was sexually assaulted. The court noted that A.S. appeared fearful and humiliated in court, she was crying, and could barely look in defendant's direction. It then "consider[ed] what motive would she have to go through the humiliation of going to the hospital, going through the sex kit physical examination, sticking to her story for the next year and a half, coming into court, [and] facing. . . her attacker[.]" and thus determined that A.S. was credible. Furthermore, the trier of fact is not obligated to accept any possible explanation compatible with the defendant's innocence, as he contends, and elevate it to the status of reasonable doubt. *People v. Evans*, 209 Ill. 2d 194, 212 (2004). Instead, the function of the trial court is to draw reasonable inferences from the evidence (*Ortiz*, 196 Ill. 2d at 259), which it did so here in favor of A.S.

¶ 27 Defendant finally contends that there was no physical evidence that he used force against A.S., such as a medical report or evidence of physical injury or trauma, or testimony about the use of a weapon. It is settled, however, that medical evidence is not required to prove criminal sexual assault (*People v. Shum*, 117 Ill. 2d 317, 356 (1987)), nor is there a requirement that there be a deadly weapon on defendant's person at the time of the rape (*People v. Murphy*, 124 Ill.

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App. 2d 71, 75 (1970)). Thus a lack of such evidence in this case does not raise a reasonable doubt as to the defendant's guilt.

¶ 28 After reviewing the entire record in the light most favorable to the prosecution, we hold that A.S's testimony was sufficient to prove defendant guilty of criminal sexual assault beyond a reasonable doubt (*Siguenza-Brito*, 235 Ill. 2d at 230), and accordingly affirm the judgment of the circuit court of Cook County.

¶ 29 Affirmed.