

2014 IL App (2d) 130416-U
No. 2-13-0416
Order filed March 28, 2014

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
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 10-CF-2479
)	
JESUS RODRIGUEZ,)	Honorable
)	Gary V. Pumilia,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hutchinson and Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The State proved defendant guilty beyond a reasonable doubt of aggravated criminal sexual abuse; specifically, that defendant touched the sexual organs of the victim, and that he did so for sexual gratification.

¶ 2 Defendant, Jesus Rodriguez, appeals from his convictions of aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2010)), for which he was sentenced to an 18-month term of probation. On appeal, defendant contends that the evidence was insufficient to prove beyond a reasonable doubt that he touched the sexual organs of the victim, and, even if he had, that he did so for the purpose of sexual gratification. We affirm.

¶ 3

I. BACKGROUND

¶ 4 On the morning of August 13, 2010, J.T. awoke to the sounds of defendant looking for lost car keys. J.T. helped defendant look for the keys, but they were unable to find them. After giving up the search, defendant asked J.T. if she would like to practice driving. J.T. was 14 years old and was not a licensed driver. J.T. agreed to the practice drive.

¶ 5 Defendant and J.T. got into the car, and defendant drove them to a park where they stopped in a cul-de-sac. J.T. exited the passenger seat and walked to the driver's door. Instead of exiting the vehicle, defendant slid over and patted his seat, indicating to J.T. that she should squeeze in between defendant and the door. J.T. sat down, but soon realized that she could neither steer nor operate the pedals in such a position. Defendant then had J.T. move onto his lap.

¶ 6 J.T. began to drive while sitting on defendant's lap. Because J.T. kept placing two feet on the pedals, defendant had J.T. spread her legs. To prevent J.T. from hitting both the gas and brake pedals simultaneously, defendant tapped J.T. on the inside of her right thigh. When defendant moved his hand back, he made contact with J.T.'s pubic area over her pants. Later, while J.T. was pulling the car into the garage (while still sitting on defendant's lap), his hand again made contact with J.T.'s pubic area. Defendant told J.T. not to mention anything about their driving lesson, claiming that he would tell the mother that they went driving together so that J.T. would not get in trouble.

¶ 7 Once J.T. arrived home, she called her aunt to talk about the "taps" from her father. Her aunt then called the police. When the police arrived, defendant told J.T. to "act natural" before he answered the door. He was then taken into custody and was read his *Miranda* rights. Defendant waived his right to an attorney and voluntarily gave a statement to the officers. In his

statement, defendant explained how he had one hand placed on the back of J.T. and another on her lap, specifically “[o]n top, not the side of her leg.” This hand placement required defendant to contort his arm instead of simply placing it next to her. When asked when the contact occurred, he told officers “[p]robably at the park” and that it may have also happened while they were pulling into the driveway for “maybe 1 or 2 seconds.” Finally, after being asked whether he told J.T. not to tell her mom about the test drive, defendant responded, “Yeah, we did a pinky swear.”

¶ 8 J.T. also gave a statement to the police. In her narrative, J.T. described how defendant first had her sit next to him in the driver’s seat only to then “move me on his lap.” When the vehicle had come to a momentary stop, defendant, while still having J.T. on his lap, “moved my left leg at a bend and apart from my right.” J.T. continued, “[h]is left hand was on my back *** and his right hand quickly went to my vagina.”

¶ 9 Defendant was charged with two counts of aggravated criminal sexual abuse. At trial, J.T. was called to testify by the State, where she gave testimony that was contradictory to her original police statements. J.T. testified that the statement she gave police was an inaccurate characterization of what she had said. When she was asked what, specifically, was incorrect, she testified that she had been the one to move her right leg apart from her left, not defendant. When asked if any other statement was incorrect, J.T. responded “[t]he one where it states of how I described him touching. I don’t recall it being that way.” Both J.T.’s statements to police and J.T.’s trial testimony are substantive evidence for us to consider. 725 ILCS 5/115-10.1 (West 2010); generally, *People v. Thomas*, 178 Ill. 2d 215, 235 (1997) (allowing prior inconsistent statements to be admitted as substantive evidence).

¶ 10 J.T. was next asked if she had written her initials next to the paragraphs on the written

statement, showing that the written statement accurately reflected what she had told officers. Despite admitting that she had signed her name to every page of the statement, J.T. testified that she did not initial the paragraphs. When pressed as to whether she had told officers that defendant had touched her vagina, J.T. claimed that she “didn’t see it that way” and that the officer may have “misinterpreted what [J.T.] said.” To this, the State asked if J.T. had previously testified that day that “[defendant’s] hand just barely touched her vagina.” J.T. admitted that she had, directly contradicting her earlier testimony that she “didn’t see it that way.”

¶ 11 Defendant was found guilty of the offenses and was sentenced to an 18-month term of probation. Defendant timely appeals.

¶ 12 II. ANALYSIS

¶ 13 On appeal, defendant argues that the evidence was insufficient to support a finding of guilt beyond a reasonable doubt for aggravated criminal sexual abuse. Specifically, defendant contends that there was no evidence introduced showing that he touched the victim in the sexual organs, and he contends that the evidence was insufficient to show that any touching was for the purpose of sexual gratification. We address each point in turn.

¶ 14 In reviewing a challenge to the sufficiency of the evidence, we do not retry defendant (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)); rather, we 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.” (Emphasis in original). *Id.* It is the responsibility of the fact finder to determine the weight and credibility to be given to testimony, as well as what inferences may reasonably be drawn from presented evidence. *People v. Bailey*, 311 Ill. App. 3d 265, 269 (2000).

¶ 15 Defendant argues that he did not make contact with the genitals of the victim. See 720

ILCS 5/12-16(b) (West 2010) (sexual conduct defined as “any knowing touching or fondling *** either directly or through clothing *** of the sex organs *** of the victim”). He contends that the court erred in finding the pubic region to be equivalent to the vagina. We disagree. The original statements given by J.T. and defendant are substantive evidence to consider. 725 ILCS 5/115-10.1 (West 2010). Based on the written statements, there is ample evidence to demonstrate that defendant made contact with the sex organs of J.T. Specifically, in the statement given by J.T., she states, “His left hand was on my back *** and his right hand quickly went to my vagina.” In addition, during her testimony, J.T. specifically mentioned and demonstrated that defendant touched her “privates.” This evidence abundantly supports the conclusion that defendant touched the sex organs of J.T., an essential element of the offense of aggravated criminal sexual abuse.

¶ 16 Defendant next argues that there was no evidence of sexual gratification. In support, defense cites *In re Matthew K.*, 355 Ill. App. 3d 652 (2005); *In re A.J.H.*, 210 Ill. App. 3d 65 (1991); and *In E.R.E.*, 245 Ill. App. 3d 669 (1993). These cases are distinguishable: in each case, the offending party was a minor accused of touching another minor. When a case involves alleged sexual conduct by a minor, the act itself does not stand to show a purpose of sexual gratification. *In re Matthew K.*, 355 Ill. App. 3d 652, 655 (2005). However, “[w]hen the accused is an adult, a fact finder can infer that an accused intended sexual gratification.” *Id.*

¶ 17 In this case, at the time of the incident, defendant was 36 years old while J.T. was 14 years old. Because the defendant was an adult and the victim was a minor, the sexual purpose of the contact can be inferred. Additionally, the fact that defendant placed J.T. on his lap strengthens the inference. Instead of switching seats with her (as J.T. had believed would happen), he had her sit on his lap. There is no explanation given why defendant chose to have

her sit on his lap as opposed to on the seat next to him where he could have given vocal commands.

¶ 18 In addition to placing her on his lap, defendant placed his hands on her to “tap” her in a way that would not ordinarily be done. Instead of touching the outside of her leg, as would be natural, he reached up and over her so that he could place his hand where he did. When we consider the age difference (an adult versus minor), placing her on his lap, and twisting his arm in an unusual manner to reach her sex organs, we conclude that the evidence demonstrates that defendant’s actions occurred for the purpose of sexual gratification.

¶ 19 Additional support for the conviction comes from the statement from defendant instructing J.T. to “remain silent.” Although defendant attempts to justify that the statement was in reference to the drive in general, the circumstances show that a rational trier of fact could have believed otherwise. Prior to the drive, defendant did not discuss with J.T. how he would discuss the drive with her mother. Instead, defendant only mentioned the need for secrecy after the drive had occurred, giving rise to the reasonable inference that defendant was attempting to hide his sexual conduct. In addition, once the police arrived, defendant further instructed J.T. to “act natural”, strengthening the inference of sexual gratification and conduct. Looking at the totality of the circumstances, a rational trier of fact could conclude that sufficient evidence of guilt existed.

¶ 20 When the evidence is appropriately viewed in the light most favorable to the prosecution (*Collins*, 106 Ill. 2d at 261), it is clear that any rational trier of fact could have found all the essential elements of aggravated criminal sexual abuse proved beyond a reasonable doubt.

¶ 21

III. CONCLUSION

¶ 22 For the foregoing reasons, we hold that the evidence was sufficient to prove defendant's guilt beyond a reasonable doubt, and we affirm defendant's convictions of aggravated criminal sexual abuse.

¶ 23 Affirmed.