2016 IL App (1st) 143881-U

SECOND DIVISION
December 20, 2016

No. 1-14-3881

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. 13 CR 13262
	)	
BRANDON WILSON,	)	Honorable
	)	Maura Slattery-Boyle,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Justices Neville and Pierce concurred in the judgment.

O R D E R

¶ 1 *Held:* Defendant's conviction for criminal sexual assault affirmed over his contention the State failed to prove beyond a reasonable doubt that he used force or the threat of force during the commission of the offense.

¶ 2 Following a bench trial, defendant Brandon Wilson was found guilty of two counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(1), (3) (West 2012)) and two counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(b) (West 2012)), and sentenced to a total of 21 years' imprisonment. On appeal, Wilson contends the State failed to prove beyond a

reasonable doubt that he committed the offense of criminal sexual assault under Count 1 where the evidence failed to sufficiently show that he used force or the threat of force against the victim. We affirm.

¶ 3 The State charged Wilson with two counts of criminal sexual assault (Counts 1 and 2) and two counts of aggravated criminal sexual abuse (Counts 3 and 4). Count 1, the only count relevant to this appeal, charged Wilson with criminal sexual assault in that he sexually penetrated the victim, L.J., by inserting his finger into her vagina by the use of force or threat of force.

¶ 4 The evidence at trial showed that L.J. was 13 years old in August 2012. She lived in an apartment in Chicago with her mother, Wilson, who was her mother's boyfriend, and her two biological brothers, including B.W., who was Wilson's biological son. Wilson had lived with L.J. since she was two or three years old, and she referred to him as her father. Wilson was 6 feet 1 inch tall and weighed between 200 and 250 pounds while L.J. was 5 feet 8 inches tall and weighed 115 pounds.

¶ 5 L.J. testified that, one night in August 2012, after her second day of eighth grade, she was sleeping in her bedroom alone when Wilson entered the room, causing L.J. to awaken. He began to touch L.J.'s vagina with two fingers and then put his fingers inside her vagina. L.J. pretended to be asleep, despite feeling pain, because she was "scared." The following night, Wilson entered her bedroom, began to touch her vagina and again put his fingers inside her vagina. He came into her bedroom that night two or three times, performing the same sexual acts on her. He stayed three to four minutes each time. She continued pretending to be asleep.

¶ 6 Over the next two weeks, Wilson came into L.J.'s bedroom five more nights, including one night where he touched her breasts. As a result, L.J. began to sleep in B.W.'s bedroom

because she did not think Wilson would do anything to her with his son nearby. Wilson, however, continued coming into the bedroom and touching L.J.'s vagina as well as her anus, including putting a finger inside her anus. The incidents continued until May 13, 2013. During all the incidents, L.J. pretended to be asleep.

¶ 7 Two days after the last incident, L.J. told her mother that Wilson had been touching her at night. Her mother then called the police, but Wilson had left the residence by the time they arrived. A month later, the police arrested him.

¶ 8 L.J. stated that she never suffered any injuries as a result of Wilson touching her. Every time he touched her, she pretended to be asleep because she was "scared" of him and afraid he might do "something else" to her, something "worse." She agreed that she did not tell her mother right away for the same reasons. Wilson would also look through L.J.'s cell phone and Facebook to see who she was talking to. L.J. exchanged messages with boys from her school, which caused Wilson to get "mad." He would "threaten[]" her about the text messages and tell her he was going to take away her phone.

¶ 9 The State presented additional evidence, including testimony from L.J.'s brother, D.J., who was sleeping in B.W.'s bedroom one night and witnessed Wilson touch L.J.'s vagina over her clothes. L.J.'s mother testified that, on three separate occasions, she saw Wilson in L.J.'s bedroom at night. On each occasion, Wilson told L.J.'s mother that he was either just checking on L.J. or looking for something. L.J.'s grandmother testified that, after the police left on May 15, 2013, Wilson returned to the residence and had an argument with a friend of L.J.'s mother about the incidents. The friend asked Wilson why he did it, and he replied "it was the drugs" and he "messed up."

¶ 10 Wilson, who was 31 years old during the period he was abusing L.J., denied molesting her. He testified that he was the "enforcer" of the family and would walk the children to school and pick them up from school. He would also "[m]onitor" with whom they were spending time, including checking their cell phones and Facebook accounts, and occasionally following them, which he explained was because the family lived in a dangerous neighborhood.

¶ 11 The trial court found Wilson guilty on all four counts. The court noted that it had the opportunity to assess the credibility of the witnesses, including L.J. and Wilson, and found Wilson had "no credibility." Wilson moved for a new trial, arguing, *inter alia*, the State failed to sufficiently prove that he used force or the threat of force to commit criminal sexual assault under Count 1. In denying the motion, the court reiterated the case was a credibility contest between the State's witnesses and Wilson, and the latter was not credible. The court further found that the State proved each material element against Wilson.

¶ 12 The trial court later sentenced Wilson to 14 years' imprisonment on both counts of criminal sexual assault, to run concurrent to one another, and 7 years' imprisonment on both counts of aggravated criminal sexual abuse, to run concurrent to one another but consecutive to the criminal sexual assault counts, for a total of 21 years' imprisonment. Wilson timely appealed.

¶ 13 Wilson contends that the State failed to prove beyond a reasonable doubt that he was guilty of criminal sexual assault under Count 1 where the evidence failed to show that he used force or the threat of force when he performed the sexual acts on L.J.

¶ 14 When a defendant challenges his conviction based upon the sufficiency of the evidence presented against him, we must ask whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could find all the elements of the crime proven

beyond a reasonable doubt. *People v. Brown*, 2013 IL 114196, ¶ 48 (citing *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979)). All reasonable inferences must be allowed in favor of the State. *People v. Lloyd*, 2013 IL 113510, ¶ 42. While we must carefully examine the evidence before us, we must give proper deference to the trier of fact who observed the witnesses testify. *Brown*, 2013 IL 114196, ¶ 48. Despite this deference, we will overturn a conviction if the evidence is "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Id.*

¶ 15 To sustain Wilson's conviction for criminal sexual assault under Count 1, the State had to prove that he sexually penetrated L.J. and used force or the threat of force. 720 ILCS 5/11-1.20(a)(1) (West 2012); *People v. Alexander*, 2014 IL App (1st) 112207, ¶ 52. On appeal, Wilson does not dispute that he sexually penetrated L.J. with his fingers. Rather, he argues the evidence was insufficient to prove he used force or the threat of force against L.J. because her testimony revealed that she pretended to be asleep during the times Wilson committed the sexual acts against her and there was no other evidence showing he threatened or hurt L.J.

¶ 16 "Force is the essence of" criminal sexual assault. *Alexander*, 2014 IL App (1st) 112207, ¶ 52. Force or the threat of force includes, but is not limited to, the following situations:

> "(1) when the accused threatens to use force or violence on the victim or on any other person, and the victim under the circumstances reasonably believes that the accused has the ability to execute that threat; or
>
> (2) when the accused overcomes the victim by use of superior strength or size, physical restraint, or physical confinement." 720 ILCS 5/11-0.1 (West 2012).

¶ 17 " 'There is no definite standard establishing the amount of force which the State is required to prove in order to prove criminal sexual assault, and each case must be considered on its own facts.' " *Alexander*, 2014 IL App (1st) 112207, ¶ 52 (quoting *People v. Vasquez*, 233 Ill. App. 3d 517, 527 (1992)). Important considerations include the size and strength of the defendant and victim, and the location and conditions under which the assault occurred (*People v. Hines*, 105 Ill. App. 3d 35, 37 (1982)), as well as the age of the victim, as children are not expected or required to offer as much resistance as an adult. *In re C.K.M.*, 135 Ill. App. 3d 145, 151 (1985). " 'If circumstances show resistance to be futile or life endangering or if the victim is overcome by superior strength or fear, useless or foolhardy acts of resistance are not required.' " *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 33 (quoting *People v. Bolton*, 207 Ill. App. 3d 681, 686 (1990)).

¶ 18 The evidence sufficiently demonstrated that Wilson used force or the threat of force while performing the sexual acts on L.J. Wilson was much larger than L.J., by five inches in height and somewhere between 85 and 135 pounds in weight, a physically mature 31-year-old man compared to a 13-year-old female teenager. Wilson and L.J. were not biologically related, but she referred to him as her father and had lived with him since she was 2 or 3 years old. Although L.J. pretended to be asleep each time Wilson performed the sexual acts on her, she did this because she was afraid of Wilson and concerned that he might do something worse to her if she did anything, such as telling her mother. See *People v. Bowen*, 241 Ill. App. 3d 608, 620 (1993) ("Merely because a victim does not cry out for help or try to escape at the slightest opportunity is not determinative on the issues of whether she was being forced *** especially if she was threatened or in fear of being harmed [citation], overcome by the superior strength of the

assailant, or paralyzed by fear."). Further, L.J. moved to a different bedroom where Wilson's son slept, believing that Wilson would not continue to assault her in the presence of his son, yet the assaults continued.

¶ 19 The circumstances reveal that, not only would L.J.'s resistance to Wilson have been futile given the size discrepancy between the two, but she was also overcome by fear when Wilson, who she referred to as her father and who referred to himself as the "enforcer," performed sexual acts on her. See *Vaughn*, 2011 IL App (1st) 092834, ¶ 34 (finding sufficient evidence of force where "the evidence clearly shows the 14-year-old [victim] was overcome by fear and the sheer presence of her father committing the offenses that resistance need not have been established in order to demonstrate the use of force or threat of force"). The fact that Wilson continued to assault L.J., even in the presence of his son, is strong evidence that any resistance by L.J. would have been futile.

¶ 20 We recognize that the evidence did not show that Wilson ever made explicit threats to L.J. or ever physically restrained her during any of these encounters. However, the law is clear that force may be achieved when the defendant overcomes his "victim by use of superior strength or size" (720 ILCS 5/11-0.1 (West 2012)), and, " '[i]f circumstances show resistance to be futile or life endangering or if the victim is overcome by superior strength or fear, useless or foolhardy acts of resistance are not required.' " *Vaughn*, 2011 IL App (1st) 092834, ¶ 33 (quoting *Bolton*, 207 Ill. App. 3d at 686). Consequently, when the evidence is viewed in the light most favorable to the State, a rational trier of fact could have found that Wilson performed the sexual acts on L.J. by the use of force or threat of force, supporting his conviction for criminal sexual assault.

¶ 21 Wilson cites to *People v. Vasquez,* 233 Ill. App. 3d 517 (1992), a case in which this court reversed a defendant's convictions for criminal sexual assault based on insufficient evidence of force, to support his contention that the evidence of force in his case was also insufficient. We find the case clearly distinguishable.

¶ 22 In *Vasquez,* 233 Ill. App. 3d at 518-25, the defendant sexually assaulted a 13-year-old male in the defendant's vehicle and underneath a viaduct. The appellate court found insufficient evidence of force, holding that, "not only would an act or acts of resistance [by the victim] not have been foolish or useless, such resistance would probably have been successful." *Id.* at 528. The court pointed out that, although the victim testified to being scared of the defendant, he also acknowledged he was not threatened by the defendant, the defendant never hurt him and he did not believe the defendant wanted to hurt him. *Id.* Notably, the court never discussed a size discrepancy, if any, between the victim and the defendant, and they did not have a father-child relationship.

¶ 23 In the present case, unlike *Vasquez,* the evidence demonstrated a large size discrepancy between Wilson and L.J., Wilson was someone she referred to as her father and she was afraid to do anything in response to Wilson's sexual acts fearing he could do something worse to her. These facts sufficiently demonstrated that Wilson used force or the threat of force while performing the sexual acts on L.J. See *Vaughn,* 2011 IL App (1st) 092834, ¶ 34. Accordingly, the evidence against Wilson was not so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of his guilt and overturn his conviction.

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

¶ 25 Affirmed.