2017 IL App (1st) 150085-U

No. 1-15-0085

Order filed August 10, 2017

Fourth Division

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 9899
	)	
EDMON GORIAL,	)	Honorable
	)	Erica L. Reddick,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE McBRIDE delivered the judgment of the court.
Justices Howse and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to prove defendant guilty beyond a reasonable doubt of attempted aggravated criminal sexual assault. The mittimus is amended.

¶ 2 Following a jury trial, defendant Edmon Gorial was found guilty of attempted aggravated criminal sexual assault and criminal sexual abuse of S.B. The trial court merged the counts and sentenced defendant to four years in prison for attempted aggravated criminal sexual assault. On appeal, defendant challenges the sufficiency of the evidence to convict, arguing that S.B.'s

testimony was improbable, unconvincing, contrary to human experience, and almost completely uncorroborated. Defendant further contends that the mittimus must be amended to reflect the correct number of days of presentence custody credit.

¶ 3 For the reasons that follow, we affirm defendant's conviction and sentence and order amendment of the mittimus.

¶ 4 At trial, 24-year-old S.B. testified that on the evening of February 23, 2013, she met up with friends in Wrigleyville and had about three drinks. From there, she and her friends went to Rogers Park to hang out. Sometime in the early morning hours of the next day, a friend dropped her off at the CTA red line so she could head home. S.B. testified that because she "had been a little intoxicated," she fell asleep and slept past her usual stop, which was Jackson. She woke up at the Garfield stop and exited the train. S.B. noticed someone following behind her that she "considered a threat." She did not know the man at the time but identified him in court as defendant. S.B. testified that when she got on the escalator, defendant was directly behind her. She stated, "I didn't pay him any mind because I didn't think nothing of it." After getting off the escalator, she exited the station and proceeded toward State Street. Defendant followed behind her.

¶ 5 S.B. testified that as she walked toward State Street, defendant came up directly beside her. She could see his face and recognized him as the man who had been behind her on the escalator. Defendant asked S.B. if she needed him to get her a taxi and if she could go back to a hotel with him. S.B. responded that she was not interested, asked defendant to please leave her alone, and sped up her walking. Defendant continued to follow behind her.

¶ 6 About half a block from the red line station, defendant grabbed S.B.'s shoulders from behind, pulled her into him, and shoved his hands inside her pants and underwear so that he was touching her vagina. When asked what kind of force defendant used, S.B. answered, "I believe he used all his force. He -- it was quick and -- it was quick and it was startling. I hadn't expected it at all. So when he pulled me into him, he locked his arm around, around me." With his head on S.B.'s shoulder, defendant whispered something in her ear. He then tried to pull her "into a building with stairs and the basement" while his hand was still in her pants. S.B. tried to fight defendant off by punching him and hitting him with her cell phone. Eventually, defendant threw her to the ground and ran back in the direction of the red line. S.B. estimated that defendant's hand was inside her pants for maybe two minutes.

¶ 7 S.B. testified that she walked to State Street, flagged down a bus, and asked the driver to wait until the police came. She then called the police, who arrived shortly thereafter. After S.B. told a responding officer what happened, she went to the police station and related the events of the evening again. S.B.'s mother then came and picked her up. When they got home, S.B. went to take a shower and noticed scrapes on her knees, a scratch in her "vagina area," and blood in her underwear from the scratch. She asked her mother to treat her knees and told her about the scratch. S.B. did not go to the hospital because she was "really shooked up" and did not want to go anywhere. She also did not take photos of her injuries.

¶ 8 On March 4, 2013, S.B. had a telephone conversation with a detective. Two days later, she went to the police station and looked at a still photo from a CTA video. She recognized defendant in the photo. A couple of weeks later, S.B. spoke with a different detective in her home and identified defendant in a photo array. Then, on April 17, 2013, S.B. went back to the

police station and identified defendant in a lineup. In court, S.B. viewed a CTA video taken at the Garfield red line station, which was later admitted into evidence. She testified that the video depicted herself "going up [*sic*] the escalator and attempting to exit the station" with defendant directly behind her.

¶ 9 On cross-examination, S.B. testified that while she was in Wrigleyville with her friends for one or two hours, she had three drinks, specifically, cognac with cranberry juice, and was "pretty intoxicated." The drinks may have been doubles, and thus the equivalent of as many as six to eight shots. However, S.B. stated that she did not drink anything at her friend's home in Rogers Park, where she stayed for an additional hour or two. S.B. testified that when she left her friend's around 2:15 or 3:15 a.m., her plan had been to take the red line to Jackson and then transfer to the pink line. When defense counsel pointed out that she got off at Garfield around 4:35 a.m. and asked whether she could have been on the train for over two hours, S.B. answered, "Yes, but I believe I was -- let see. I believe when I had fell asleep -- honestly I don't really remember. It's a little choppy." S.B. explained that when she woke up at Garfield, she did not simply take the red line back north to Jackson because the pink line had stopped running by that time. Instead, she planned to take the State Street bus to get back to her neighborhood. She agreed that when she first woke up, she thought she was "on Independence," but did not realize she was at Garfield until she was outside of the train station.

¶ 10 S.B. clarified on cross-examination that defendant reached into her pants with only one hand, although she could not remember which one. She also could not remember which of her shoulders defendant had leaned over, and agreed the incident happened "a long time ago" and it was hard to remember some of the details. S.B. stated that she did not recall ever saying that

defendant put both of his hands down her pants. When confronted with her preliminary hearing testimony that defendant grabbed her vagina with "his hands," S.B. explained that the transcript was inaccurate and she had said "his hand." S.B. stated that defendant's finger did not go inside her vagina, that she did not tell a detective that it had, and that if the detective's notes included such a statement, the notes were mistaken. S.B. further testified that on the night of the offense, she carried her debit card and CTA pass in her coat pocket. She had initially thought she lost her wallet on the street during her struggle with defendant, but later learned she had accidentally left the wallet at her friend's home in Rogers Park. S.B. admitted that after the incident, a car stopped and the driver asked her if she needed help. She stated that she declined the offer of help because she did not want to deal with a stranger. She also declined when the police asked her at the station if she wanted any kind of medical assistance, as she just wanted her mother to come get her.

¶ 11 On redirect examination, S.B. stated that although she was "foggy" about certain things that happened on the night in question, she was not "choppy" about the identity of the person who put his hand down her pants and groped her vagina.

¶ 12 S.B.'s mother, Betty L. Williams, testified that on the morning of February 24, 2013, she went to the police station in response to a call from an officer. When she arrived, she found S.B. crying, hysterical, and distraught. S.B. told her what had happened and eventually, they went home. After S.B. showered, she showed Williams cuts on her knees, which Williams cleaned with peroxide. S.B. also showed Williams blood that was in her underwear.

¶ 13 Chicago police detective Elizabeth Miller testified that late in March 2013, she was assigned to do a follow-up investigation of the incident in question. A possible suspect had been

identified, so Miller compiled a computer-generated photo array, which she then showed to S.B. at her home on April 2, 2013. S.B. identified defendant in the array. About two weeks later, on April 17, 2013, S.B. came to the station and identified defendant in a lineup.

¶ 14 At the close of the State's case, defendant made a motion for a directed verdict, which the trial court denied.

¶ 15 Defendant presented the stipulated testimony of Chicago police detective Annette Ferrig that after she interviewed S.B. on March 23, 2013, she wrote the following in her general progress report: "Reporting detective spoke to victim, stated offender inserted his finger in her vagina before she fought him off with her cell phone."

¶ 16 Following closing arguments, instructions, and deliberations, the jury found defendant guilty of attempted aggravated criminal sexual assault and criminal sexual abuse. Defendant filed and argued a posttrial motion to set aside the jury verdict, which the trial court denied. The court thereafter merged the counts and sentenced defendant to four years in prison for attempted aggravated criminal sexual assault.

¶ 17 On appeal, defendant challenges the sufficiency of the evidence to convict, arguing that S.B.'s testimony was improbable, unconvincing, contrary to human experience, and almost completely uncorroborated. Defendant asserts that S.B. was intoxicated and disoriented at the time of the incident, and then confused in her recollection of it. He argues that several circumstances cast doubt on her recollection: she drank up to eight shots' worth of cognac, did not know where she was when she woke up, initially thought she had been robbed of her wallet, and contradicted herself by saying that she considered the man following her to be a threat, but also that she "didn't pay him any mind because [she] didn't think nothing of it." Defendant

argues that beyond the video showing that he was at the Garfield station, the State failed to present any other corroborating evidence, such as video of him re-entering the red line station, medical testimony, or photographs of S.B.'s injuries. Finally, defendant questions S.B's identification of him as the perpetrator, noting that S.B. identified him in the photo array and lineup only after the police showed her a photo of him at the train station. He argues that her "diminished capacity at the time only exacerbated the recognized risk that she became fixated on the person shown in the first image she saw after the incident."

¶ 18 When reviewing the sufficiency of the evidence, the relevant inquiry 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. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 131 (1999). The testimony of a single witness, if positive and credible, is sufficient to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). A reviewing court will not reverse a conviction simply because the defendant claims that a witness was not credible. *Id*. In addition, a victim's testimony need not be corroborated by physical or medical evidence to sustain a criminal sexual assault conviction. *People v. Le*, 346 Ill. App. 3d 41, 50 (2004). Reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989).

¶ 19 Here, the jury was well aware of defendant's objections to S.B.'s credibility and version of events. During closing arguments, defense counsel asserted that S.B. had "some perception issues." He emphasized that on the night of the offense, S.B. drank six to eight, or maybe more, shots of cognac, implied that her intoxication may have caused her to give a "feeble description" of her attacker to the police, and argued that her inability to remember that she left her wallet at her friend's home constituted powerful evidence of how intoxicated she was. Counsel reminded the jury about the problems with the timeline of S.B.'s evening out, as well as S.B.'s inconsistent accounts regarding whether the perpetrator put one or two hands down her pants, and whether or not he put a finger inside her vagina. Counsel noted that S.B. refused medical attention and took no photos of her injuries, and argued that it was speculative for S.B. to conclude that the scratch on her labia and blood in her underwear were caused by the attack. In addition, counsel emphasized the State's failure to introduce corroborating physical evidence, such as photographs of S.B.'s injuries, S.B.'s cell phone, which he proposed might have been damaged in the struggle, or a recording of her 911 call. Counsel presented a "theory" to the jury that S.B. was indeed attacked, and then, while she was still upset, the police presented her with defendant's photo from the video, and "once poor [S.B.] felt that she had somebody to blame for this, it had to be this gentleman here." Finally, counsel argued that S.B. admitted she was "not very attentive to the party at all times" and asserted her testimony was "extremely confused" and, using S.B.'s own word, "choppy."

¶ 20 Despite these arguments, the jury chose to believe S.B., which was its prerogative in its role as the trier of fact. See *People v. Moody*, 2016 IL App (1st) 130071, ¶ 52. We have reviewed S.B.'s testimony and find no basis to reverse the credibility findings of jury, which saw and

heard her testify. A person commits attempted aggravated criminal sexual assault, as charged in the instant case, when he takes a substantial step toward committing an act of sexual penetration by the use or threat of force and causes bodily harm to the victim. 720 ILCS 5/8-4(a), 11-1.20(a)(1), 11-1.30(a)(2) (West 2012). "Sexual penetration" includes any contact, however slight, between the sex organ of one person and an object, or any intrusion, however slight, of any part of the body of one person into the sex organ of another person. 720 ILCS 5/11-01 (West 2012). S.B. testified at trial that defendant grabbed her shoulders from behind, pulled her into him, and shoved his hand or hands into her pants and underwear so that he was touching her vagina. With his hand still in her pants, defendant then tried to pull her into a building. After a struggle, he threw her to the ground. S.B. related that as a result of defendant's acts, she suffered a bloody scratch to her "vagina area" and scrapes on her knees. She identified defendant in a photo array, a lineup, and in court, and testified that although she was "foggy" about certain things that happened on the night of the offense, she was not "choppy" about the identity of her attacker. S.B.'s testimony was corroborated by the CTA video, which depicted defendant directly behind her on the escalator, and Betty Williams' account of treating S.B.'s scraped knees and seeing the blood in S.B.'s underwear. We find that the evidence, viewed in the light most favorable to the prosecution, was sufficient to establish that defendant committed attempted aggravated criminal sexual assault against S.B. Moreover, for purposes of reasonable doubt, S.B.'s positive identification was sufficient to support defendant's conviction. *Moody*, 2016 IL App (1st) 130071, ¶ 53; see also *Slim*, 127 Ill. 2d at 307 (positive identification by a single witness who had ample opportunity to observe will support a conviction if the identification is not vague or doubtful).

¶ 21 The evidence in the instant case was not "so unsatisfactory, improbable or implausible" as to raise a reasonable doubt as to defendant's guilt. *Slim*, 127 Ill. 2d at 307. Accordingly, defendant's challenge to the sufficiency of the evidence fails.

¶ 22 Defendant's second contention on appeal is that the mittimus must be amended to reflect 58, rather than 51, days of presentence custody credit. Under section 5-4.5-100(b) of the Unified Code of Corrections, defendants "shall be given credit *** for the number of days spent in custody as a result of the offense for which the sentence was imposed." 730 ILCS 5/5-4.5-100(b) (West 2012). Because sentencing credit for time served is mandatory, a claim of error in the calculation of such credit cannot be forfeited. *People v. Brown*, 2017 IL App (3d) 140907, ¶ 9. Here, the State concedes the issue and we agree with the parties. Pursuant to Illinois Supreme Court Rule 615(b)(1) (eff . Jan. 1, 1967), we order the clerk of the circuit court to amend the mittimus to reflect 58 days of presentence custody credit.

¶ 23 For the reasons explained above, we affirm the judgment of the circuit court and order amendment of the mittimus.

¶ 24 Affirmed; mittimus amended.