

No. 1-16-1736

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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. 11 CR 5293
)	
CHRISTOPHER RODRIGUEZ,)	Honorable
)	Joseph G. Kazmierski, Jr.,
Defendant-Appellant.)	Judge Presiding.

JUSTICE ROCHFORD delivered the judgment of the court.
Presiding Justice Hoffman and Justice Delort concurred in the judgment.

ORDER

- ¶ 1 **Held:** Defendant's conviction affirmed where the evidence was sufficient to prove him guilty beyond a reasonable doubt of aggravated criminal sexual assault.
- ¶ 2 Following a bench trial, defendant Christopher Rodriguez was convicted of the aggravated criminal sexual assault of N.V. and sentenced to 10 years in prison. On appeal, defendant challenges the sufficiency of the evidence to convict, arguing that N.V.'s testimony was incredible, inconsistent, and unsupported by medical testimony. We affirm.

¶ 3 Defendant's conviction arose from the events of November 13, 2010. After his arrest, defendant was charged with 28 counts of aggravated criminal sexual assault, one count of aggravated battery based on strangulation, one count of aggravated battery, and two counts of aggravated unlawful restraint. N.V. was the named victim.

¶ 4 At the trial, N.V. testified that in November 2010, she was living in a two-bedroom Chicago apartment with Carlos Rodriguez, who was her boyfriend, and their son, who was one year old. Defendant, who was Carlos's half-brother, had also been living at the apartment since the end of May. He slept on the floor of N.V.'s son's bedroom. N.V. testified that defendant was "like my brother, like my boyfriend's brother," and that he helped out by babysitting for her son and doing chores around the apartment.

¶ 5 On the evening of November 12, 2010, N.V. and her girlfriends took N.V.'s son to the home of Carlos's and defendant's sister, Margarita Farfan, so that she could babysit him for the night. N.V. and her friends went to a restaurant and drove around. At some point, defendant called and asked for a ride home. Eventually, N.V. picked him up. N.V. drove her friends to their homes and drove home with defendant around 1 or 2 a.m. Carlos was not at the apartment.

¶ 6 About 20 minutes later, after helping defendant with his Facebook page, N.V. went to her bedroom, closed the door, and changed into her pajamas. When she reopened her bedroom door and went into the living room, she saw that defendant was drinking from a bottle of her alcohol; N.V. became upset. She returned to her bedroom and closed the door, securing the broken door frame with a towel along the bottom to hold the door closed.

¶ 7 At some point, N.V. woke and saw defendant at the foot of her bed. She asked him: "[W]hat the f**k you doing in my room?" Defendant jumped on top of her, pushed her blanket over her face so she could not breathe, and "suffocated" her. She testified: "I was pushing and

yelling and the more I yelled and the more I moved, the less air that I had to breathe and the less strength that I had. I was losing strength and literally gasped for my last breath, and that's what I last remember ***."

¶ 8 When N.V. awoke, she was alone in the room and she was half off the bed. Her head felt "swollen," like the "size of an air balloon." When she sat up, she observed blood next to a hammer on the bedroom floor. Neither the bloodstains nor the hammer had been there when she went to bed. Through the open door, she could see defendant in the living room, lying on the floor with his "chin in his hands, laying on his stomach, facing me." His eyes were closed. N.V. went into the bathroom, looked in the mirror, and started crying and screaming because she "looked like a monster." Her face was swollen and bruised. She woke defendant and asked him what he had done to her. Defendant apologized, told N.V. she was like his sister, and asked her to not call Carlos because Carlos would "abandon[]" him and he would go to jail for the rest of his life. While sitting on her bed, N.V. felt dizzy and had trouble seeing because there was blood in her eyes. She asked defendant to get her keys and phone so she could go to the hospital and she told him she would not call the police if he did so. Defendant brought N.V. her purse. While N.V. was looking for her phone, defendant moved her bed and a butcher knife fell between the bed and the wall. The knife had not been there when N.V. went to bed.

¶ 9 Defendant knelt on the floor, crying and, again, begged N.V. to not call Carlos. When N.V. attempted to call Carlos, defendant started pacing around the apartment. Because she was nervous, N.V. locked herself in the bathroom. While using the toilet, N.V. realized that she was no longer wearing the tampon she had used the night before and that, the "black spot" she had seen on the rug near her bedroom door, must have been the tampon.

¶ 10 N.V. waited in the bathroom until she could no longer hear defendant pacing. After opening the bathroom door and confirming that defendant was not in the apartment, she called Carlos again. When he did not answer, she texted an image of her face to Carlos's friend, Juan Munoz, who came and drove N.V. to St. Mary's Hospital. During the ride, N.V. received a phone call from Ms. Farfan, who said N.V.'s son was awake. N.V. told Ms. Farfan what had happened to her.

¶ 11 At the emergency room, N.V. spoke with a nurse and a doctor, informed them she had been raped, and underwent a sexual assault examination.

¶ 12 While at the hospital, N.V. was visited by some of Carlos's friends, Ms. Farfan, and Carlos's grandmother. They visited her one at a time "and switched turns." She did not know whether they had brought her son to the hospital. When asked what was then going through her head at the hospital, N.V. answered as follows:

"Where is my son, what's going to happen. I wanted to make sure he was safe because [Ms. Farfan] had accused me of what did I do. What did I do to cause this. And I was like nothing. So then I was scared for my son because I didn't know what they would do with my son in the process of this if I called police or anything like that."

¶ 13 N.V. stated that she spoke with police officers at the hospital. Because her son was with defendant's family, she was afraid and did not tell the police what had happened. While she was at the hospital, N.V. contacted her own family and told them to get her son from Ms. Farfan.

¶ 14 When she returned home from the hospital, and knowing that her son was then safe, N.V. called the police so they could collect evidence and "make sure they had the proper police report." The hammer was now on the kitchen counter and the butcher knife was in the dishwasher.

¶ 15 The police came to the apartment and collected evidence. N.V. later spoke with several different detectives at the police station.

¶ 16 N.V. testified that she never gave defendant permission to suffocate her, to beat her face, to put his finger in her vagina and remove her tampon, or to put any of his body parts in her vagina or anus.

¶ 17 N.V. identified photographs of her apartment, showing the hammer on the kitchen counter; the blanket in the living room which defendant had been lying on; the bottle of alcohol from which he had been drinking; the knife in the dishwasher; bloodstains on her bedroom rug, comforter, and pillow; and the clothing and bloodstained panty liner she had been wearing. N.V. also identified photographs which depicted injuries to her face, cheek, jawbone and eyes; a cut on her leg; bruises near her knee and wrist; her forehead with “a circular mark on it;” her swollen and stitched lip; and cuts on her foot. The photographs were admitted into evidence.

¶ 18 On cross-examination, N.V. agreed that when she first regained consciousness and went into her bathroom, she did not think at that point that she had been raped. She acknowledged that she did not call the police or 9-1-1 from the apartment, and explained that the reason she texted Mr. Munoz was because Carlos occasionally stayed with him.

¶ 19 When Ms. Farfan called her during the ride to the hospital, she asked Ms. Farfan to take her son to her mother’s and grandmother’s house. When asked whether Ms. Farfan agreed to do so, N.V. responded: “She was yelling at me asking me what did I do. So she didn’t say that she was going to take my son. She ended up hanging up.” During their conversation at the hospital, N.V. only remembered Ms. Farfan saying that her son was “okay.” N.V.’s lips were being stitched when Ms. Farfan arrived, “so it was hard to talk.” Eventually, N.V. learned from her family that Ms. Farfan had dropped off her son “like [she] asked her to.”

¶ 20 N.V. stated that she did not tell “the doctors” that she had been raped. At the hospital, N.V. told the police that she “got jumped” at a gas station. She denied that Carlos had moved out of the apartment, but acknowledged that he stayed there only about four days a week. N.V. told detectives that she and Carlos were having relationship problems. When asked whether she had problems with shortness of breath and inability to breathe, N.V. said: “Yes, I get anxiety attacks.” In addition, when asked how long she struggled with defendant before losing consciousness, N.V. answered: “I don’t remember. I was -- maybe a minute.”

¶ 21 N.V. denied receiving any money from Elizabeth Rodriguez—who is the aunt of defendant and Carlos—other than birthday money for her son in October 2011. And, she denied having conversations with Elizabeth or Carlos Rodriguez, Sr.—the father of defendant and Carlos—about her “relationship” with defendant. She did not tell Carlos Sr. that she and defendant were “in love.” N.V. denied having a consensual sexual relationship with defendant. N.V. did not fight with defendant on the night in question and did not throw anything at him. She usually kept the hammer behind the door to her bedroom.

¶ 22 Juan Munoz testified that in November 2010, Carlos had been living with him for “like a year.” At some point in the early morning hours of the date in question, he received a text message from N.V. with a picture of her face looking “beat up.” After speaking with N.V. on the phone, Mr. Munoz drove N.V. to the hospital and left. Carlos was not with Mr. Munoz that night and Mr. Munoz did not try to contact him.

¶ 23 Consuelo Vargas, an emergency room nurse at St. Mary’s Hospital, testified that, at about 8:30 a.m. on the date in question, she assisted in the treatment of N.V., whom she learned had been sexually assaulted. Nurse Vargas is a trained sexual assault nurse examiner. N.V.’s face and lip were swollen, and she appeared to be in a great amount of pain (level 10) and in shock. In

addition, N.V. was menstruating. Nurse Vargas testified that she and Dr. Adam Black conducted a sexual assault examination that included taking vaginal and anal swabs. A police evidence technician came and collected the swabs and other items which had been placed in a sealed box. Nurse Vargas recalled that N.V. had some visitors in the hospital, but did not remember their names or relationships to N.V.

¶ 24 On cross-examination, Nurse Vargas testified that N.V. told her she had woken up in an alley with her pants and tampon missing. However, Nurse Vargas did not see any dirt or debris showing that N.V. had been lying in an alley, and the blood in N.V.'s hair was dry, so Nurse Vargas knew she had not showered. Nurse Vargas offered N.V. a sexual assault examination. N.V. initially said no to the exam. Nurse Vargas thought it was because N.V. was "in shock" and was "gather[ing] her thoughts." N.V. accepted medications for sexually transmitted diseases, but declined HIV medication. Nurse Vargas informed N.V. that she would be contacting the police and asked N.V. if she wanted to talk with them. According to Nurse Vargas: "[A]t that time [N.V.] didn't want to answer any questions. Her face and lip [were] pretty swollen and she was pretty uncomfortable. Uncomfortable enough that she got eight milligrams morphine while in the emergency department." While she was at the hospital, N.V. "[broke] down and just started crying."

¶ 25 On redirect, Nurse Vargas testified that N.V.'s injuries included: a laceration to her lip; bruising and swelling on both sides of her face; a bruise on her back; a scratch on the top of her foot; and an abrasion to her forehead. While at the hospital, N.V. later talked to the police and a rape victims' advocate.

¶ 26 Dr. Adam Black, chairman and medical director of the emergency room at St. Mary's Hospital, testified that he examined N.V. on November 13, 2010. She had a bruised right eye,

significant soft tissue swelling to the right side of her face and jaw, and a laceration on the right side of her upper lip. Based on his exam, he ordered various tests, repaired N.V.'s lip laceration and administered pain and anti-nausea medication. No additional treatment was needed based upon the test results. Dr. Black was not present when Nurse Vargas conducted the sexual assault examination.

¶ 27 On cross-examination, Dr. Black related that N.V. told him that a bag was thrown over her head, she was beaten and suffocated, and she woke up in an alley. The nurse's notes did not indicate injuries to N.V.'s genitalia, but "the documentation of those specific injuries would have been in the evidence collection kit that [he] was not given to evaluate."

¶ 28 Chicago police officer Alan Kavanagh testified that on the day in question, he was on patrol when he responded to a call at N.V.'s address. There, he spoke with N.V., who had extensive bruising and discoloration on her face, bruising on her arms and legs, and was shocked and upset. The apartment was "somewhat in disarray," and there were blood stains on the carpet in N.V.'s bedroom. N.V. showed him a knife and a hammer. After speaking with N.V., Officer Kavanagh began looking for defendant.

¶ 29 The parties stipulated that: "cellular material" collected from the handle of the hammer matched defendant's DNA; the swab of N.V.'s anus tested positive for the presence of semen; and a partial male DNA profile, identified in the semen, matched defendant.

¶ 30 At the close of the State's case, defendant made a motion for a finding of acquittal, which the trial court denied.

¶ 31 Margarita Farfan, testified that on November 12, 2010, N.V. called and asked her if she could babysit for her son. Ms. Farfan initially told N.V. that she could not but, eventually, agreed to babysit. N.V. dropped off her son around 9 p.m. At about 7 a.m. the next morning, Ms. Farfan

noticed that she had missed a 3 a.m. call from N.V. She called N.V., who was hysterical and “had, like, different stories.” N.V. told Ms. Farfan she had woken up bloody and that she “got into it” with defendant. N.V. asked Ms. Farfan to take the baby to N.V.’s grandmother’s house. According to Ms. Farfan, after this conversation, she called N.V. back and asked if she should go to N.V.’s house to see if she was okay. N.V. refused, but did not give Ms. Farfan an explanation as to why and hung up. Ms. Farfan called N.V. back again and told her to keep in contact. Later, N.V. texted to say that she was going to St. Mary’s Hospital and again asked that Ms. Farfan take the baby to N.V.’s grandmother’s house.

¶ 32 Ms. Farfan dropped off the baby at N.V.’s grandmother’s house and then went to the hospital with her own grandmother. At the hospital, N.V. told Ms. Farfan that she had been “jumped by some guys.” According to Ms. Farfan, N.V. did not ask about her son, “[b]ecause she knew where he was at.” When asked whether she told N.V. that she had dropped off the baby, Ms. Farfan answered: “I’m sure she knew that. *** Because she told me to do that. I’m sure, maybe, her grandmother had called her.”

¶ 33 On cross-examination, Ms. Farfan denied that she did not like N.V., stating: “I didn’t approve of the way she was living.” Ms. Farfan testified that while she was with N.V. at the hospital, a nurse and a rape advocate talked to N.V. about “the situation.” After she left N.V.’s room, her grandmother went in.

¶ 34 Elizabeth Rodriguez testified that in October 2011, N.V. called her to report that she and her baby were hungry, she had no money, and she could not get in contact with Carlos. Elizabeth told N.V. to come over and she would give her money. That day, N.V. told Elizabeth she was having an affair with defendant. Elizabeth told N.V. they should stop, because if Carlos found out it would be a big problem. About one week later, Elizabeth mentioned the affair to her

brother, Carlos's and defendant's father, in the presence of defendant and N.V., and that neither defendant nor N.V. denied it.

¶ 35 Defendant testified that he moved into Carlos's and N.V.'s apartment when he was released from custody in October 2011. He explained that Carlos was not "living" there at the time, but would stay overnight at the apartment two or three nights a week. At first, defendant and N.V. were friends, and N.V. would braid his hair every week or so. Eventually their relationship turned intimate and they had sex "every time [Carlos] wasn't there, pretty much." Defendant was also seeing other women at the time. Defendant had a conversation with his father and Elizabeth about his sexual relationship with N.V.

¶ 36 Defendant testified that on the night in question, he had gone out and started calling N.V. for a ride home around midnight. N.V. picked him up around 3 a.m., dropped off her girlfriends who were also in her car, and then drove home. When they arrived, N.V. asked defendant to roll a "blunt" of marijuana while she took a shower. Defendant sat down on N.V.'s bedroom floor to play a video game and roll the blunt. Shortly thereafter, N.V. came out of the bathroom wearing a long white t-shirt, sat behind defendant on the bed, played with his hair, and took a hit off the blunt. Defendant got up and the two started kissing and engaging in sex. When defendant realized N.V. was menstruating, defendant refused to continue. According to defendant, N.V. kissed and touched him and invited him to have anal sex with her. During anal sex, defendant ejaculated. Afterwards, he went into the other bedroom and fell asleep.

¶ 37 The next thing defendant remembered was waking up to the sound of N.V. pacing in her room. Defendant went to her door and saw that her face was "red and stuff," so he deduced she was crying. When N.V. saw him, she said: "We can't do this. You got to get the F out the crib." Defendant responded that he had a girlfriend and told her: "Just be cool." At this point, N.V.

became angry, took defendant's jacket from a laundry hamper and threw it out the back door. Defendant walked up to N.V., grabbed her, and pushed her out of the way, causing her to "roll" by the bathroom. As defendant picked up his jacket from the doorway, N.V. hopped up, grabbed a hammer, tossed it toward him, and charged. Defendant "hit her," and "punched her, like a couple times, three times." He further explained: "Well, my arms just flew out. I guess I hit her in the face." N.V. then swung at defendant a couple of times, ran to her room, and laid face down on her bed. N.V.'s face was bleeding.

¶ 38 Defendant began to walk to the front door. N.V., who was crying, left the bed and ran toward him. Defendant testified that his "instinct kicked in," causing him to grab her and throw her to the floor of her bedroom. He held her down because she was "going crazy." When N.V. calmed down, he released her and she got up and walked to the bathroom. As N.V. washed her face, defendant apologized and suggested that she should not tell Carlos that he "touched her up." N.V. said it was okay. At N.V.'s request, defendant retrieved her keys and phone. He then left the apartment. Defendant denied taking a tampon out of N.V.'s vagina.

¶ 39 On cross-examination, defendant acknowledged that he had a 2007 conviction for aggravated unlawful use of a weapon. He denied that N.V. helped him with his Facebook page after returning to the apartment. While he admitted drinking a shot from a bottle of N.V.'s alcohol, he denied that N.V. got mad about it. Defendant also explained that he had touched the hammer many times before the incident. When asked whether he told N.V. not to call Carlos because he would be abandoned by his brother, defendant answered: "You know. Me, personally, who cares? If my brother abandons me. We're brothers. You really can't." In addition, he explained that he did not offer to take N.V. to the hospital because he "didn't want nothing to do with her after that."

¶ 40 Following closing arguments, the trial court announced its findings. The trial court found that the State had not proven the aggravating factor that defendant committed any offense while armed with a hammer or a knife, and that the State had not proven the counts based on the allegation that defendant removed N.V.'s tampon. The court found defendant guilty of criminal sexual assault on counts 1, 3, 5, 7, 9, 11, 13, and 15, all of which alleged contact between penis and anus; aggravated criminal sexual assault on counts 17 and 18, which alleged defendant caused N.V. bodily harm by striking her about the body; aggravated criminal sexual assault on counts 19, 21, 23, 25, 27, and 28; aggravated battery based on strangulation on count 29; and of unlawful restraint on counts 31 and 32.

¶ 41 Defendant filed a motion for a new trial, arguing that the State's evidence was inconclusive, inconsistent, and contradictory and that N.V. was not credible. The trial court denied the motion, stating that it "heard the evidence and considered all the factors, various factors raised by both sides, and made credibility determinations during the course of the trial," and it did not "see a reason at this point in time to change the court's prior ruling with regard to the counts, finding of guilt[]."

¶ 42 At sentencing, the trial court noted that the criminal sexual assault, aggravated criminal sexual assault, aggravated battery, and unlawful restraint charges on which it had found defendant guilty all encompassed the same force that was used in the commission of the offense. Accordingly, the court announced it would sentence defendant on count 21 only, which charged defendant with aggravated criminal sexual assault based on penis to anus contact and "the use of force or threat of force *** in such a manner as to threaten or endanger the life of [N.V.]." After hearing arguments in aggravation and mitigation, defendant's statement in allocution, and the testimony of defendant's father, the trial court imposed a sentence of 10 years in prison.

¶ 43 Defendant did not file a notice of appeal within 30 days. Pursuant to a postconviction petition, the trial court granted defendant leave to file a late notice of appeal.

¶ 44 On appeal, defendant challenges the sufficiency of the evidence to sustain a conviction for the aggravated criminal sexual assault of N.V.

¶ 45 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, is 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).

¶ 46 To prove the charge of aggravated criminal sexual assault, upon which defendant was sentenced, the State was required to show that defendant engaged in nonconsensual and sexual intercourse with N.V. by the use or threat of force, while acting in such a manner as to threaten or endanger her life. 720 ILCS 5/12-1.30(a)(3) (West 2016).

¶ 47 N.V. testified that she awoke to find defendant in her room. Defendant held her down on the bed with force and suffocated her with a blanket until she lost consciousness. After N.V. regained consciousness, she was laying with half her body off the bed. There were blood stains on the floor, and her face, eyes, and lips were bloodied and bruised. The blood stains had not been there when she went to bed. Defendant apologized and begged her to not call Carlos because defendant would go to jail.

¶ 48 Defendant admitted to having anal intercourse with N.V. and the DNA evidence established the presence of his semen in N.V.'s anus. N.V. testified that she had not consented to any sexual contact with defendant. The medical testimony and photographs confirmed her extensive physical injuries; including bruises and swelling to her face, a laceration on her lip which required stitches, a bruised eye, a cut on her leg and foot, and bruises on her knee and wrist. The evidence, when viewed in the light most favorable to the State, was sufficient to find defendant guilty of aggravated criminal sexual assault.

¶ 49 Defendant asserts that N.V.'s testimony was incredible, inconsistent, and unsupported by medical testimony. Defendant argues on appeal that N.V.'s testimony—when she explained that the reason she gave a false account of the incident at the hospital was because she feared for her son's safety—was unbelievable in that she entrusted her son's care to Ms. Farfan just the night before and did not ask Ms. Farfan about the boy's location. Additionally, defendant asserts that: there was no evidence to corroborate N.V.'s testimony that she logged onto defendant's Facebook account, or evidence that police discovered a used tampon at the apartment. Defendant points out that there was no medical evidence to support N.V.'s testimony and that, as a result of being smothered with a blanket for "one minute," she remained unconscious for hours and had no recollection of being beaten and raped. Defendant maintains that the medical evidence

actually supported his own account of the evening. According to defendant, the medical evidence did not show injury to N.V.'s genitalia, but to other parts of her body, which was consistent with his testimony that he and N.V. had a consensual sexual encounter and, later, "a fight" during which he punched her in the face several times. Finally, defendant argues that due to N.V.'s claimed lack of memory of the entire episode, there is no evidence that her bodily harm was caused "during the commission of the offense."

¶ 50 Here, the trial court was well aware of defendant's objections to N.V.'s credibility and version of events and challenges to the sufficiency of the evidence. These same arguments were made by defense counsel when presenting the motion for acquittal at the end of the State's case and during closing arguments. After considering the evidence at trial and defendant's arguments, the trial court chose to believe N.V. over defendant, which was within its authority and discretion as the trier of fact. See *People v. Moody*, 2016 IL App (1st) 130071,

¶ 52. We have reviewed the testimony of N.V., defendant, and the other witnesses, and find no basis to reverse the credibility findings of the trial court, who observed the demeanor of the witnesses and heard their testimony and considered their testimony along with the scientific, medical, and photographic evidence. We find that the evidence as a whole, when viewed in the light most favorable to the prosecution, was not "so unsatisfactory, improbable or implausible" 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.

¶ 51 We affirm the judgment of the circuit court.

¶ 52 Affirmed.