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2017 IL App (3d) 150614-U

Order filed November 6, 2017

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2017

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of the 14th Judicial Circuit, Rock Island County, Illinois,
Plaintiff-Appellee,)	
v.)	Appeal No. 3-15-0614
)	Circuit No. 14-CF-603
BRODY ADAM COOPER,)	Honorable
Defendant-Appellant.)	Michael F. Meersman, Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence is sufficient to prove defendant's guilt beyond a reasonable doubt.

¶ 2 Defendant, Brody Adam Cooper, appeals from his conviction for predatory criminal sexual assault of a child. Defendant argues that his conviction must be reversed because the evidence was insufficient to sustain his conviction. We affirm.

¶ 3 **FACTS**

¶ 4 The State charged defendant with predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2008)) and aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2008)). Count I alleged that defendant had committed an act of criminal sexual assault of a child against K.W. Count II alleged that defendant had committed an act of criminal sexual assault of a child against O.Z.

¶ 5 Before trial, the State filed a motion to admit evidence relating to count II as other-crimes evidence in the trial on count I. The court granted the State's motions and severed the charges for trial. The case proceeded to a bench trial.

¶ 6 At the beginning of the trial, the parties stipulated that defendant was over 17 years of age at the time that the alleged sexual assault occurred.

¶ 7 The State called the victim, K.W., as its first witness. K.W. testified that she was born on June 17, 2002, and she was then 12 years old. Approximately one year before trial, K.W.'s friend, M.H., said that she had been molested by her babysitter. K.W. told M.H. that she too was the victim of sexual assault. K.W. told M.H. that her cousin, whom she identified as defendant, had sexually assaulted her. M.H. told K.W. to report the incident, but K.W. initially decided not to tell anyone. Later in the day, K.W.'s mother noticed that K.W. and M.H. had exchanged text messages regarding their incidents of sexual assault. K.W.'s mother asked K.W. "[w]ho did it?" K.W. started crying and would not let her mother see the remaining text messages. K.W.'s mother became upset, and K.W. told her mother that defendant had sexually assaulted her. K.W. did not provide her mother with the details of the incident.

¶ 8 The day after she told her mother, K.W. told her father, Brent W. about the incident. K.W. told Brent that the incident had happened on her birthday when she received a flat-screen television. K.W. testified that she turned eight years old on the birthday at issue. K.W.

acknowledged that when she first started talking about the incident, she did not remember her age at the time of the incident. K.W.'s stepmother had helped her to remember her age when she told K.W. that she received the television in 2009 on her eighth birthday. On redirect examination, K.W. acknowledged that she might have guessed the wrong year as she would have only been seven years old in 2009. K.W. said that receiving the television was the fact that stood out in her memory, and that she had to "really rack" her brain to remember some of the details.

¶ 9 K.W. explained that her parents did not live together, and the incident happened in her bedroom at Brent's house. On the night of the incident, K.W.'s friend, Janalee, spent the night. Brent had also arranged for defendant and his son to sleep in the living room. K.W. did not remember what she and Janalee did during the sleepover, but she remembered that during her interview at the Child Advocacy Center (CAC); she said that they painted their nails and played games. K.W. and Janalee slept in K.W.'s bedroom, on K.W.'s queen-sized bed. The bed was located in the corner of the room, and K.W.'s new television was in another corner facing the bed. K.W. did not recall the time when she and Janalee went to bed. K.W. only remembered that Janalee had gone to sleep first in the corner of the bed. When defendant entered the room, Janalee was still asleep and K.W. was awake, lying on her side watching television at the foot of the bed. At the time, K.W. was wearing her Lion King nightgown. According to K.W., defendant positioned himself on the bed so that he and K.W. were facing each other. K.W. felt scared and closed her eyes as defendant lay on the bed. Defendant lay next to K.W. for about five minutes before he reached his hand inside K.W.'s underwear and started rubbing her vagina. Defendant then put his finger inside of K.W.'s vagina. K.W. thought that defendant was going to hurt her so she did not stand up or move away. Defendant fell asleep after he removed his hand. At this time, K.W. was still awake, but she fell asleep before defendant left the room. K.W. explained

that she mistakenly said during the CAC interview that she fell asleep during the assault, but her memory of the incident had since cleared and she remembered falling asleep after defendant removed his hand.

¶ 10 K.W. said that she did not immediately tell anyone about the sexual assault because she was scared, feared of being judged by others, and thought that no one would believe her. K.W. only told M.H. because M.H. had a similar experience.

¶ 11 K.W. testified that she did not see defendant after the incident. However, K.W. thought that she had accepted a Facebook friend request from defendant after the incident. K.W. also said that she may have wished defendant a happy birthday on Facebook.

¶ 12 Brent testified that he was K.W.'s father and defendant was his cousin. Brent recalled that defendant had stayed at Brent's house once after defendant attended a pool party that was held in celebration of K.W.'s birthday. Brent could not recall the year that the party occurred, but he remembered that he had purchased a television to give to K.W. Also on that night, K.W.'s friend stayed with K.W. at Brent's house. K.W. and her friend went to bed before the adults. The next morning, Brent saw defendant in the living room.

¶ 13 After the birthday party, Brent and K.W. had intermittent contact with defendant. During these interactions, Brent did not notice any odd behavior or inappropriate actions between K.W. and defendant. Prior to the incident, K.W. and defendant had a "[v]ery casual" relationship in which they would say "hi and bye" to each other.

¶ 14 Regarding the year that the incident occurred, Brent said that he first told the police that he got the television for K.W. in 2010, but on the morning of the trial, he found out that he had purchased the television for K.W. in 2009. Brent explained that he remembered the 2009 date because it was the year that his mother had died. On redirect examination, Brent said that he

believed that his mother had died in 2008, and he asked his sister, Kim, who was not called to testify but was seated in the gallery, to confirm the date. Kim responded that their mother had died in 2008. Brent explained that he had mixed up the dates because 2008 and 2009 were very emotional years as his mother had died in 2008 and his son was born in 2009.

¶ 15 Moline Police Detective Heidi Nelson testified that, on May 8, 2014, she conducted the CAC interview with K.W. Nelson explained that she was the liaison officer at the school that K.W. attended. K.W. and a friend had previously reported to Nelson that another girl had been sexually assaulted. Despite K.W.'s willingness to talk about the other assault, she did not report her own incident to Nelson until the CAC interview.

¶ 16 The CAC interview video recording was admitted into evidence. In the recording, K.W. said that her cousin, whom she identified as defendant, had sexually assaulted her when she was seven or eight years old. K.W. explained that defendant did not live with K.W.'s family, but on the night of the incident, defendant and his son spent the night. Defendant and his son were supposed to sleep in the living room. K.W. thought that the incident occurred in the summer because her friend, Janalee, who was spending the night, had to go home early because she had summer school. Nelson responded that she did not know that children that young attended summer school, but then admitted that she did not know much about summer school.

¶ 17 Before the incident, Janalee fell asleep while she and K.W. lay on the bed. Janalee lay near the head of the bed, and K.W. lay at the foot of the bed facing the television. K.W. recalled that she wore a Lion King nightgown to bed. Around 2 a.m., defendant entered K.W.'s bedroom. At the time, K.W. was lying down trying to go to sleep. K.W. did not mention if she was watching television. Defendant appeared to think that K.W. was asleep, and unlike her trial testimony, K.W. recalled that defendant lay on the bed behind her. Defendant put his hand inside

K.W.'s underwear and rubbed and placed his finger in K.W.'s vagina. K.W. thought that she fell asleep during the incident because she did not remember seeing defendant leave the room. K.W. remembered that she was very scared during the incident and did not know what to do. K.W. thought that she might have seen defendant once after the incident during a family gathering.

¶ 18 K.W. explained that her mother learned of the incident while she was looking through K.W.'s text messages. K.W.'s mother saw a text message from K.W.'s friend, M.H., that said K.W. needed to speak with someone about the incident of sexual assault. K.W. began crying and took her cell phone from her mother. K.W. was afraid to tell Brent about the incident because she believed that he would do something to defendant and get arrested.

¶ 19 After a break in the interview, K.W. told Nelson that she could not remember if the incident had happened on her birthday, but she thought that she had received a television as a birthday gift that year. K.W. thought that the television that she had drawn on the diagram of her room was the one that she had received for her birthday on the year that the incident occurred.

¶ 20 Another alleged victim, O.Z., testified that, in April 2010, when she was 14 or 15 years old, she spent the night at her friend P.H.'s house. During the night, O.Z. awoke to find a man she did not know touching her vaginal area through her clothing. The man lay behind her on the bed. The man left after P.H. entered the room. O.Z. told P.H. about the incident, and P.H. responded "it's okay, he does it to me, too." O.Z. told her mother about the incident, and her mother contacted the police. During the CAC interview, O.Z. identified defendant as the man who had touched her.

¶ 21 P.H. testified that on the night O.Z. stayed at her house, P.H.'s grandmother had died. According to P.H., defendant, who is P.H.'s cousin, arrived at the house in the morning. Around 9 or 9:30 a.m., O.Z., P.H., and P.H.'s two-year-old niece all lay in P.H.'s bed. Thereafter,

defendant was not feeling well, and he also went to lay in the bed. O.Z. was never alone with defendant. P.H. never saw defendant touch O.Z., and P.H. never told O.Z. that defendant had inappropriately touched her.

¶ 22 The court found defendant guilty of count I, predatory criminal sexual assault of a child. The court did not consider the other-crimes evidence (defendant's alleged incident with O.Z.) because it could not determine who was testifying truthfully. The court noted that count I turned entirely on K.W.'s credibility. The court found K.W.'s testimony credible. The court also made the following factual findings: K.W. was seven years old at the time of her birthday when the incident occurred; K.W. reported the sexual assault allegations five years later, K.W. associated the incident with the birthday that she received a television, K.W.'s testimony was "almost exactly" the same as her statement from the CAC interview. The court found K.W.'s testimony credible noting that she was consistent in describing: the clothing that she wore, her position on the bed, and the allegations against defendant. The court did not comment on the inconsistency between K.W.'s testimony and CAC interview regarding defendant's location on the bed. Finally, the court noted that K.W.'s testimony did not appear rehearsed and she did not have an "axe to grind against" defendant because she hardly knew him. The court sentenced defendant to seven years' imprisonment. Defendant appeals.

¶ 23 ANALYSIS

¶ 24 Defendant argues that the evidence was so improbable, unsatisfactory, or inconclusive that it failed to prove his guilt beyond a reasonable doubt. Defendant specifically argues that the case was reliant solely on K.W.'s testimony, and her testimony was discredited by the five year delay in reporting the alleged incident, tainted by hearing other stories of molestation, and her

statements were improbable and inconsistent. We find that the evidence, when viewed in the light most favorable to the State, is sufficient to sustain defendant's conviction.

¶ 25 In a challenge to the sufficiency of the evidence, we must determine, after viewing the evidence in the light most favorable to the State, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). “[A] reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses.” *People v. Brown*, 2013 IL 114196, ¶ 48. “[T]he testimony of a single witness, if positive and credible, is sufficient to convict.” *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). In a bench trial, the trial judge, sitting as fact finder, must determine the credibility of witnesses, weigh the evidence and reasonable inferences there from, and resolve any conflicts in the evidence. *Id.* A reviewing court will not substitute its judgment for the judgment of the trier of fact simply because the evidence is merely conflicting, contradictory, or defendant claims that a witness was not credible. *Id.*; *People v. Downin*, 357 Ill. App. 3d 193, 202 (2005). A criminal conviction will only be reversed where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant's guilt. *Brown*, 2013 IL 114196, ¶ 48.

¶ 26 In this case, defendant challenges his conviction for predatory criminal sexual assault of a child. 720 ILCS 5/12-14.1(a)(1) (West 2008). To prove this charge beyond a reasonable doubt, the State was required to show that “the accused was 17 years of age or over and commit[ed] an act of sexual penetration with a victim who was under 13 years of age when the act was committed.” *Id.* We address the evidence in support of each of the elements in order.

¶ 27 First, defendant stipulated that he was over the age of 17 at the time the sexual assault was alleged to have occurred thereby proving the first element of the offense.

¶ 28 Second, viewed in the light most favorable to the State, K.W.’s testimony and her statements during the CAC interview established that defendant committed an act of sexual penetration. K.W. testified that, on the night of her birthday party, the birthday when she received a television, she stayed at her father, Brent’s house. That night, defendant also stayed at the house. K.W. testified and said in her CAC interview that she saw defendant enter her room while she was lying on her bed. Defendant then lay next to K.W. on the bed and placed his hand in K.W.’s underwear. K.W. said that she felt defendant rub and place his finger in her vagina. K.W.’s statements during the CAC interview on these critical facts were consistent with her trial testimony.

¶ 29 The circuit court expressly found K.W. to be credible. We defer to the circuit court on this issue of credibility. *Brown*, 2013 IL 114196, ¶ 48. Moreover, after reviewing the record, we agree with the court’s determination that K.W.’s statements on the penetration element were very consistent and credible. Additionally, K.W.’s testimony regarding the date and location of the incident were corroborated by Brent’s testimony. Both witnesses testified that the event occurred at Brent’s house on the only night that defendant stayed at the house—the night of K.W.’s birthday party.

¶ 30 Third, the evidence showed that K.W. was less than 13 years of age at the time the incident occurred. K.W. testified on direct examination that she was eight years old at the time of the incident. On redirect examination, K.W. acknowledged that she would have been seven years old at the time of the incident because she was born in 2002 and maintained that the incident had occurred in 2009. Although differing, both sets of testimony indicated that she was less than 13 years of age, and thus established the age of the victim element of this offense. Viewed in the

light most favorable to the State, we find that the evidence was sufficient to sustain each of the elements of the charge of predatory criminal sexual assault of a child.

¶ 31 In coming to our conclusion we reject the inconsistency and improbability arguments relied on by defendant. Defendant specifically argues that K.W.'s testimony conflicted with statements that she made during the CAC interview. For example, K.W. testified that defendant lay facing her on the bed while she said in the CAC interview that defendant lay behind her on the bed. Additionally, unlike her trial testimony, K.W. did not mention that she was watching television when defendant entered the room. Defendant also contends that K.W.'s testimony was improbable because: K.W. did not report the incident for five years; K.W. maintained a normal relationship with defendant after the alleged incident; and K.W.'s testimony was influenced by M.H.'s report of molestation, K.W.'s reporting of another friend's incident of molestation, and O.Z.'s testimony.

¶ 32 We find that none of defendant's arguments directly refutes K.W.'s consistent statements that defendant placed his finger in her vagina at a time when K.W. was less than 13 years old. These statements proved the contested elements of the charged offense. The mere fact that K.W.'s testimony did not align perfectly with her statements in the CAC interview does not refute her consistent allegations. *Siguenza-Brito*, 235 Ill. 2d at 228. Rather, the consistency and probability issues raised by defendant presented a credibility determination. The circuit court, in its role as fact finder, was tasked with resolving these issues (*Id.*), and we defer to the court's findings (*Brown*, 2013 IL 114196, ¶ 48). Therefore, after reviewing the record and viewing the evidence in the light most favorable to the State, we conclude that the evidence was sufficient for the court to find beyond a reasonable doubt that defendant had committed predatory criminal sexual assault.

¶ 33

CONCLUSION

¶ 34

The judgment of the circuit court of Rock Island County is affirmed.

¶ 35

Affirmed.