2018 IL App (1st) 152711-U

No. 1-15-2711

Order filed July 11, 2018

Third Division

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

FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 14 CR 3260
	)	
VALEN LITTLE,	)	Honorable
	)	Domenica A. Stephenson,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE FITZGERALD SMITH delivered the judgment of the court.
Justices Howse and Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for aggravated criminal sexual assault are affirmed over his contention that the State did not prove beyond a reasonable doubt the aggravating factor that, when he committed criminal sexual assault, he acted in such a manner that threatened or endangered the victim's life.

¶ 2 Following a jury trial, defendant Valen Little was found guilty of two counts of aggravated criminal sexual assault (720 ILCS 5/12-14(a)(3) (West 2006)) of the victim, V.T., in that he committed criminal sexual assault and, during the commission of the offense, acted in

such a manner that threatened or endangered V.T.'s life.[1] Defendant was subsequently sentenced to 10 years in prison for each count, to be served consecutively. On appeal, defendant contends his convictions should be reduced to criminal sexual assault because the State did not prove beyond a reasonable doubt the aggravating factor that he threatened or endangered V.T.'s life. We affirm.

¶ 3 Defendant's first jury trial resulted in a mistrial due to juror misconduct. At defendant's second trial, V.T. testified that, in 2006, she was a shift manager at White Castle and, on April 25, 2006, her shift ended around 3:15 a.m. V.T.'s boyfriend, Camille Howard, usually picked her up, but after calling him numerous times that night, he did not answer his telephone. V.T. decided to walk home because she was frustrated and ready to go home.

¶ 4 On V.T.'s walk home, she noticed a four-door tan car driving around in circles. At some point, she heard a man from behind her say in an "aggressive" tone of voice, "Hey bitch, hey bitch, come here." V.T. turned around and saw a man by a four-door tan car. V.T. just stood there because she was afraid. The man walked towards V.T. and grabbed her jacket in a "strong hold." V.T. felt like she could not get away and did not struggle because she was afraid. When the man was holding V.T.'s jacket, he told her, in an "aggressive" tone, that he was going to kill her with a gun and, while doing so, he reached back into his waistband. V.T. thought he was reaching for a weapon or a gun.

¶ 5 The man then forced V.T. into the driver's side of the car, which was a few feet away. V.T. crawled to the passenger's side. The man got into the driver's side and asked V.T. if she

[1] The section under which defendant was convicted was renumbered as section 11–1.30 by Pub. Act 96-1551, art. 2, § 5 (eff. July 1, 2011)).

had a credit card. V.T. told him she did not and asked him to take her home to get one. The man told V.T. he would not take her home because she would not come back out.

¶ 6 The man drove around and eventually stopped the car in a secluded area surrounded by vacant lots. V.T. did not look at the man's face because she was afraid. V.T. testified that, when he stopped the car, he fondled her breasts and told her to "suck his dick." The man touched V.T. in her vaginal area and put her mouth on his penis. He then climbed on top of V.T., inserted his penis in her vagina, and kissed her on the mouth. The man asked V.T., "Did I hurt you?", "Did I rape you?", and if he could be her boyfriend. V.T. did not respond to the man's questions because she was afraid. V.T. did not want the man to kiss her and never agreed to allow him to touch her body or to have vaginal or oral sex with him.

¶ 7 The man let V.T. out of the car near a laundromat. V.T. ran inside and told two women what had happened. About a month later, V.T. picked out the individual who she thought had raped her from a group of photographs and a line-up. The person V.T. identified was not defendant. In 2012, V.T. was shown another photograph array of possible suspects but was unable to identify anyone. V.T. testified that she did not get a good look of the man who raped her. On cross-examination, V.T. testified that she thought the offender had a gun but she never saw a gun, an object that could have been a gun, or anything that looked like a gun.

¶ 8 Symone Barry testified that, on April 25, 2006, she worked at White Castle with V.T. and V.T. left the restaurant at about 3:15 a.m. At about 4 a.m., Barry received a call from V.T., who was hysterical, crying, and stumbling on her words.

¶ 9 Mary Mallett, the manager of the laundromat, testified that, on April 25, 2006, at 4 a.m., a woman, who was crying and hysterical, came into the laundromat and asked her to call the

police because she had been raped. Deritha Stigler, an employee at the laundromat, testified that the woman was hollering and screaming that she had been raped.

¶ 10 Chicago police officer Eduardo Almanza testified that, on April 25, 2006, at about 4:20 a.m., he and his partner met with V.T. at a laundromat. V.T. was shaken up, crying, and angry.

¶ 11 Heather Oleksy, the emergency room nurse who treated V.T., testified that, on April 25, 2006, at about 4:51 a.m., the police brought V.T. into the emergency room. V.T. was shaking, trembling, and upset. V.T. told Olesky that when she was walking home, a man approached her in a car, pointed what she thought was a gun at her and said "bitch get in the car, or I'll kill you." V.T. told Olesky that he ripped at her clothes and raped her vaginally and orally. A rape kit was performed on V.T. and vaginal swabs were collected.

¶ 12 Gitana Wallace, a forensic scientist with the Illinois State Police, testified that she identified semen on the vaginal swabs taken from V.T. Robert Boyle, a forensic DNA analyst with Cellmark Laboratories, testified he performed DNA tests and worked up the DNA profile from the semen found on the vaginal swabs. Boyle obtained a mixture profile in the sperm fraction of the vaginal swabs with a major male DNA profile, but he did not have a male profile to compare it to. The minor mixture was female and matched V.T.'s DNA profile. Michael Mathews, a forensic scientist with the Illinois State Police, testified that, in June 2007, the male DNA profile identified on the vaginal swabs taken from V.T. was uploaded into a DNA database, where it was continually searched. On March 26, 2012, an association was made to defendant for the male DNA profile found on V.T.'s vaginal swabs.

¶ 13 Chicago police detective David Kupczyk testified that, in March 2012, he received information that defendant's name was associated with the male DNA profile found on V.T.'s

vaginal swabs. Kupczyk compiled a photographic array, but V.T. was unable to pick out anyone. Defendant was arrested on April 6, 2012, and, after a buccal swab was taken from him, he was released because Kupczyk had to wait for the DNA to develop.

¶ 14 Greg DiDomenic, a forensic scientist with the Illinois State Police, testified that he worked up the buccal standard taken from defendant and obtained a full male profile. DiDomenic determined that the male profile identified on the vaginal swabs taken from V.T. matched defendant's DNA profile and would be expected to occur in approximately 1 in 2.9 quintillion black, 1 in 57 quintillion whites, or 1 in 12 quintillion Hispanic unrelated individuals.

¶ 15 Defendant testified that, in 2006, he would seek out female companionship by going to the West side of Chicago to pick up prostitutes. He could tell if a person was a prostitute based on eye contact and body language. When he approached a person he thought was a prostitute, the person would come to his car and he would negotiate with her.

¶ 16 Defendant testified that, on April 25, 2006, he drove to the West side of Chicago, negotiated with a prostitute to have sex for $20, and then drove to a quiet residential area because it seemed safe at that time. Defendant testified that, after he parked the car, the woman pulled his zipper down and she performed oral sex. The woman then went over to the passenger side, pulled her pants down, and they had sex. After the woman saw that he had more than $20, they got into an argument because she wanted more money. Defendant started driving because he wanted to take her back to where he picked her up. The woman asked him to stop the car at a laundromat. Before she got out of the car, she said, "[t]his is all you're going to give me for what I did" and "I got you, you know." The woman went into the laundromat and defendant drove off. In 2012, defendant consented to giving a "cotton swab" to Kupczyk because he did not do

anything wrong. Defendant testified that he never forced the woman to have sex with him and never told her he had a gun or was going to kill her.

¶ 17 The jury found defendant not guilty of two counts of aggravated criminal assault based on the aggravating factor that he displayed, threatened to use, or used a dangerous weapon, other than a firearm, or any other object fashioned or used in a manner that leads the victim, under the circumstances, reasonably to believe that the object is a dangerous weapon (720 ILCS 5/12-14(a)(1) (West 2006)). However, the jury found defendant guilty of two counts of aggravated criminal sexual assault in that he knowingly committed an act of sexual penetration on V.T. by contact between his penis and V.T.'s mouth (Count III) and his penis and V.T.'s vagina (Count IV), by the use of force or threat of force, and acted in such a manner as to threaten or endanger V.T.'s life (720 ILCS 5/12-14(a)(3) (West 2006)). The court subsequently denied defendant's motion for a new trial and sentenced him to 10 years in prison for each count, to be served consecutively.

¶ 18 Defendant contends on appeal that the State did not prove him guilty of aggravated criminal sexual assault beyond a reasonable doubt because it did not prove the aggravating factor that he acted in acted in a manner that threatened or endangered V.T.'s life. Defendant argues that the State only proved he made a verbal threat to V.T.'s life but did not prove he committed an overt act that actually endangered her life. Defendant asserts that he cannot be convicted based only on making a verbal threat.

¶ 19 When we review the sufficiency of the evidence, 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.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). It is the jury's responsibility to resolve conflicting testimony, weigh the evidence, and determine what reasonable inferences to draw there from. *People v. Robinson*, 2016 IL App (1st) 130484, ¶ 26. We will not retry a defendant (*People v. Giraud*, 2011 IL App (1st) 091261, ¶ 17), or substitute our judgment for that of the fact finder on issues about the weight of evidence or the credibility of the witnesses (*People v. Siguenza-Brito*, 235 Ill. 2d 213, 224 (2009)). We will not reverse a conviction unless the evidence presented to the jury has been so improbable as to raise a reasonable doubt of defendant's guilt. *People v. Allman*, 180 Ill. App. 3d 396, 401 (1989).

¶ 20 To prove defendant guilty of aggravated criminal sexual assault as charged, the State had to prove beyond a reasonable doubt that he committed criminal sexual assault and he acted in such a manner as to threaten or endanger V.T.'s life. 720 ILCS 5/12-14(a)(3) (West 2006); see *People v. Everhart*, 405 Ill. App. 3d 687, 704 (2010). A verbal threat alone is insufficient to prove the aggravating factor that a defendant threatened or endangered the victim's life. See *People v. Leach*, 385 Ill. App. 3d 215, 221 (2008) (citing *People v. Singleton*, 217 Ill. App. 3d 675, 687 (1991)). Rather, the State must prove that it was overt acts by the defendant, and not verbal threats, which endanger or threaten a victim's life, and that the life-threatening acts must occur during the commission of the offense. *Singleton*, 217 Ill. App. 3d at 687.

¶ 21 Here, defendant does not dispute he committed criminal sexual assault against V.T. Rather, he contends the State did not prove the aggravating factor, *i.e.,* he threatened or endangered V.T.'s life during the criminal sexual assault, as it did not prove that he committed an overt act that actually endangered her life. We find the evidence sufficient for the jury to

conclude that, when defendant committed criminal sexual assault against V.T., he threatened or endangered her life.

¶ 22 During the early morning hours, defendant approached V.T. from behind and, in an aggressive tone, said "Hey bitch, hey bitch, come here." V.T. just stood there because she was afraid. Defendant grabbed V.T.'s jacket in a "strong hold" and, while reaching back into his waistband, threatened that he was going to kill her with a gun. V.T. thought defendant was reaching for a weapon or a gun. Defendant then forced V.T. into his car and drove to a secluded area, where he sexually assaulted her. Viewing the evidence in the light most favorable to the State, we find the evidence was sufficient for the jury to reasonably conclude that defendant not only verbally threatened V.T. but also committed an overt act that threatened V.T.'s life when he grabbed her jacket in a "strong hold," threatened to kill her with a gun, and reached into his back waistband such that she believed he was reaching for a gun. See *People v. Everhart*, 405 Ill. App. 3d 687, 705 (2010) (where the defendant grabbed the victim from behind, placed an "object" to her head, and threatened to " 'blow [her] brains out,' " if she did not comply, this court found the evidence showed that the defendant committed an overt act to threaten the victim's life).

¶ 23 Defendant cites *People v. Singleton*, 217 Ill. App. 3d 675, 687 (1991), *People v. Giraud*, 2012 IL 113116, and *People v. Leach*, 385 Ill. App. 3d 215 (2008), to support his argument that he did not act in such a manner as to threaten or endanger V.T.s' life, as he only made a verbal threat to kill V.T. and "[a] threat to use a gun is not an act of actually endangering" a victim under section 12-14(a)(3). We are unpersuaded by defendant's reliance on these cases.

¶ 24 In *Singleton*, the defendant had committed acts of domestic violence against the victim and her family frequently throughout the years. *Singleton*, 217 Ill. App. 3d at 675, 679-87. On

one incident, after the victim refused to have sexual intercourse with the defendant, he told her he would kill her if she did not comply. *Id.* at 684. The victim went into the bedroom and when she hesitated, the defendant pushed her down on the bed. *Id.* The fifth district concluded that none of the prior acts of abuse had occurred at the time of the sexual assault and found that the defendant's overt act of pushing the victim onto the bed could not be viewed as a life-threatening act. *Id.* at 687.

¶ 25 In *Giraud*, the defendant had forcible intercourse with the victim knowing he was HIV positive and the aggravating factor for aggravated criminal sexual assault was that he knowingly exposed the victim to HIV. *Giraud*, 2012 IL 113116, ¶ 1. Our supreme court concluded that the threat of exposing the victim to HIV during the commission of the offense, which placed her at "some risk of acquiring an infection" that could lead to developing a potentially fatal disease, did not threaten or endanger her life. *Id.* ¶¶ 6, 13, 33-39. The court therefore affirmed the appellate court's finding that he was only guilty of criminal sexual assault. *Id.* ¶¶ 1, 39.

¶ 26 Here, unlike *Singleton*, after defendant grabbed V.T.'s jacket, he threatened to kill her with a gun and, while doing so, reached back into his waistband such that she believed he was actually reaching for a gun. See *Everhart*, 405 Ill. App. 3d at 705 (finding *Singleton* distinguishable and noting that the defendant "used the threat of a weapon to force [the victim] to comply"). Further, in contrast to *Giraud*, defendant's conduct did not place her at a risk for a possible future harm but actually threatened her life during the commission of the offense. Accordingly, contrary to *Singleton* and *Giraud*, we find that defendant's act of grabbing V.T.'s jacket in such a manner that she felt like she could not leave and then reaching toward his waistband while aggressively stating he would kill her with a gun was adequate evidence of an

overt act such that we cannot conclude that no rational trier of fact could find defendant guilty beyond a reasonable doubt.

¶ 27 For the reasons explained above, we affirm defendant's convictions.

¶ 28 Affirmed.