2018 IL App (1st) 153209-U

SIXTH DIVISION
October 5, 2018

No. 1-15-3209

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MICHAEL JOHNSON, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 10 CR 11648 Honorable Joseph Kazmierski, Judge Presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justice Harris concurred in the judgment.
Justice Connors dissented.

ORDER

¶ 1 ***Held*****:** We reverse defendant's conviction for murder and sexual assault. The evidence introduced by the State was inadequate to prove defendant's guilt beyond a reasonable doubt.

¶ 2 Defendant Michael Johnson was convicted of first degree murder (720 ILCS 5/9-1(a)(1) (West 2008)) and two counts of aggravated sexual assault (720 ILCS 5/12-14(a)(4) (West 2008)) in connection with the death of L.B. The circuit court sentenced him to 40 years' imprisonment for the murder and 30 years' imprisonment for each sexual assault, all to be served

consecutively. On appeal, defendant contends, *inter alia*, that he was not proven guilty beyond a reasonable doubt. We reverse the defendant's conviction and sentence.

¶ 3 BACKGROUND

¶ 4 Before defendant's trial, the circuit court ruled on evidentiary motions. The State moved to admit evidence of other crimes, and defendant moved to suppress statements made by defendant to police detectives during the course of their investigation. The court granted both motions in part and denied both in part.

¶ 5 The other-crimes evidence that the State sought to introduce related to several sexual assaults and homicides in and around the Roseland neighborhood in Chicago over the course of about two years. Defendant was charged in four murder cases and two additional sexual assault cases. Defense counsel objected to the admission of such evidence, arguing that the offenses were not sufficiently similar and their introduction would unreasonably extend the trial. The court denied the State's motion as to most of the requested evidence, but allowed testimony by C.F., whom defendant allegedly sexually assaulted within a few months of L.B.'s death.

¶ 6 The statements that defendant sought to suppress were made during interrogations on May 22 and May 28, 2010. Defendant was arrested on May 22 in connection with the sexual assault of C.F. While the police had him in custody, they asked him questions related to the victims of several homicides and sexual assaults, including the killing and sexual assault of L.B. Although the interrogation included questions related to murder investigations, the interview was not recorded in accordance with section 103-2.1(b) of the Code of Criminal Procedure. (725 ILCS 5/103–2.1(b) (West 2008)). The defense argued that, because the interview was not recorded, both it and the subsequent May 28 custodial interview should be suppressed. See (725 ILCS 5/103–2.1(d) (West 2008)). The State argued that the May 22 interview was not a murder

investigation, so the police were not required to record it. Alternatively, the State argued that there was no evidence that defendant was mistreated by the police, and so the presumption of inadmissibility had been overcome. The court granted the motion in part, barring the entire May 22 interview, and denied the motion in part, allowing statements from the May 28 interrogation so long as they did not refer to the May 22 interview. The court specifically found that the May 22 interview had been conducted in violation of section 103-2.1(b), but that the May 28 interrogation was sufficiently attenuated from the May 22 interview to avoid the sanction of section 103-2.1(d).

¶ 7 The following information was adduced at trial. At the time of her death, L.B. was addicted to drugs and supported her habit through prostitution. Shortly after midnight on January 11, 2010, Novelda Stanley saw L.B. walking from 118th Street toward 119th Street. Later that day, L.B.'s body was found in an abandoned apartment on 119th Street. Her body was in a pile of garbage, arms and legs spread, wearing nothing but socks.

¶ 8 Medical examiner Dr. Lauren Mosher-Woertz testified that she conducted an autopsy of L.B. In her opinion, the injuries to L.B.'s neck bone and muscles indicated that she died of strangulation. She also noted mucosal tears around L.B.'s anus. Although such tears could be caused by constipation, given the circumstances, Dr. Mosher-Woertz "fear[ed] that these tears are more traumatic in nature than just a natural event." Dr. Mosher-Woertz took vaginal, anal, and oral swabs from L.B.'s body.

¶ 9 Forensic scientist Cindy Lee testified that she conducted a series of tests on the swabs taken by Dr. Mosher-Woertz. The vaginal and anal swabs tested positive for semen, and the oral swab indicated the presence of semen, although no sperm cells were found. Autosomal DNA testing of the vaginal and anal swabs identified a common male DNA profile. The Illinois State

Police compared that unknown male DNA profile with that of defendant, who had provided a DNA sample during his May 22 interview. The comparison revealed a match between the semen found in L.B. and the defendant's DNA.

¶ 10 Forensic scientist Lisa Fallara testified for the defense. She testified that she performed YSTR DNA testing on the oral swab taken from L.B.'s body. YSTR testing isolates the Y-chromosome, making it useful in sexual assault cases where both male and female DNA are present. Fallara's analysis of the oral swab revealed the presence of three male DNA profiles, a major contributor and two minor contributors. Johnson was ruled out as the major contributor, but could not be ruled out as one of the minor contributors. However, 68% of men in a random population also could not be excluded. The DNA experts all agreed that male DNA can be recovered from inside a woman as much as 72 hours after sexual contact.

¶ 11 Before C.F. testified, the court informed the jury that her testimony would only be admitted for the limited purposes of "the defendant's identification, presence, intent and knowledge". C.F. testified that in early 2010, she worked as a prostitute to fund her drug addiction. At that time, she was using drugs "all day, every day." Early one morning, she was working as a prostitute near a store called Big Sam's near West 119th Street and South Harvard Avenue in Chicago. She approached defendant outside of the store and asked if he was looking for her. She agreed to have sex with him for $20.

¶ 12 C.F. testified that they walked to a nearby gangway where she asked defendant for the money. Defendant began patting his body, looking for money. Franklin started "feeling funny" and attempted to back away. Defendant then grabbed the hood of her coat and pulled her to the ground. Defendant began to strangle C.F., telling her to be quiet "in a soft tone" and with "coldness in his eyes." When she regained consciousness, C.F. realized her pants and underpants

had been taken off, and that her top had been ripped open. She picked up her clothes and other belongings and ran to a friend's house. She testified that she knew defendant ejaculated in her vagina because she was wet. At trial, C.F. could not recall anything unusual about defendant's hands, stating they felt like "regular hands." She did not see a doctor and did not call the police after the assault. She testified that she did not come forward initially because such abuse is an inevitable part of prostitution.

¶ 13 C.F. then testified that a few weeks later she was walking toward Big Sam's when she saw defendant come out of the store. She confronted him and told him that she remembered him. He "looked at [C.F.] like he didn't know what [she] was talking about and kept going". On May 22, she again saw defendant outside of Big Sam's. C.F. called her boyfriend and friend to come "beat [defendant] down." Her boyfriend and his friend caught up to and stopped defendant about a block away. When C.F. arrived, she flagged down a police car and accused defendant of raping her.

¶ 14 Chicago Police Detective Patrick Durkin testified that on May 28, 2010, he and his partner interviewed defendant. When confronted with a photograph of L.B., defendant denied knowing her. When asked, he also denied ever having sex with her. The detectives asked him how his DNA got in L.B.'s body. Defendant asserted that it was impossible that they found his DNA and that the detectives were "tripping."

¶ 15 The jury found the defendant guilty of murder and two counts of aggravated sexual assault. The circuit court sentenced him to 40 years' imprisonment for the murder and 30 years' imprisonment for each sexual assault, all to be served consecutively. This appeal followed.

¶ 16 ANALYSIS

¶ 17 When a defendant challenges the sufficiency of the evidence supporting a conviction, we must determine whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime charged beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Brown*, 2013 IL 114196, ¶ 48. "This standard of review applies in all criminal cases whether the evidence is direct or circumstantial." *People v. Ehlert*, 211 Ill. 2d 192, 202 (2004).

¶ 18 In this case, there is no direct evidence linking the defendant to the death of the victim. However, "[c]ircumstantial evidence is sufficient to sustain a criminal conviction, provided that such evidence satisfies proof beyond a reasonable doubt of the elements of the crime charged." *People v. Hall*, 194 Ill. 2d 305, 330 (2000).

¶ 19 We will not reverse a criminal conviction "unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of [the] defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217 (2005). However, we must reverse the conviction if we conclude that the evidence is so unsatisfactory or inconclusive that it creates a reasonable doubt of the defendant's guilt. *People v. Smith*, 185 Ill. 2d 532, 541-42 (1999).

¶ 20 Defendant argues that the evidence introduced by the State was insufficient to establish beyond a reasonable doubt that he murdered and sexually assaulted the L.B. At most, he contends, the evidence proved that he was one of at least three men who had sexual contact with the victim within a few days of her death. The State argues, however, that the evidence in this case established that defendant sexually assaulted and murdered the victim. In support of its conclusion, the State notes that: (1) the defendant had sexual relations with the victim as evinced by his DNA profile obtained from the victim's vaginal and anal swabs; (2) mucosal tears around the victim's anus indicate that the sexual contact was forceful; (3) C.F. identified defendant as

the perpetrator of a subsequent, factually similar sexual assault; and (4) defendant's denial of sexual contact with the victim, even in the face of DNA evidence, shows that he had a guilty mind. Based on this evidence, and the reasonable inferences to which they lead, the State contends that a reasonable trier of fact could find, beyond a reasonable doubt, that defendant murdered and sexually assaulted L.B. We disagree.

¶ 21 DNA evidence establishing that a defendant had sexual contact with a murder victim within three days of her death is insufficient to establish that the defendant was the last person to see her alive. See *People v. Escort*, 2017 IL App (1st) 151247, ¶ 21. In *Escort*, a woman was found dead in the courtyard of an abandoned warehouse. *Id.*, ¶ 1. "When found, she was naked, and articles of her clothing were found on the roof of the building." *Id.* Due to the nature of the woman's injuries, a forensic pathologist determined the cause of death to be strangulation. *Id.*, ¶ 10. The victim was later identified as a woman who had been addicted to drugs and had turned to prostitution to support her habit. *Id.*, ¶ 8.

¶ 22 DNA analysis of swabs taken from the victim's vagina and rectum identified a predominant male profile. *Id.*, ¶ 3. A second DNA profile was identified from a stain on her pants. *Id*. Analysis of the victim's pantyhose revealed three sources, although it was impossible to determine whether any of those sources were a match with the predominant or second DNA profile. *Id.* When the police compared the DNA profiles against those in a national database, they identified the defendant as the source of the predominant DNA profile. *Id.*, ¶ 4.

¶ 23 The final witness in the *Escort* trial was the victim of an earlier sexual assault by the defendant. *Id.*, ¶ 11. She testified that he had choked her in the course of the attack. *Id.* The defendant was convicted of murder and sentenced to 60 years' imprisonment. *Id.*, ¶ 1.

¶ 24 Upon review, we reversed the conviction and sentence, finding that the evidence was insufficient to prove the defendant's guilt beyond a reasonable doubt. *Id.* In particular, we found that "[a]lthough the fact that sperm cells containing the defendant's DNA profile were found in a great quantity on the victim's vaginal swab and the vaginal swab sticks may well support a reasonable inference that the defendant had sexual relations with the victim after the other individuals whose DNA was detected on the swabs taken from the victim's body, that fact does not establish a temporal link between the defendant's sexual encounter with the victim and the time of her death. *** It would be pure speculation to conclude that the defendant and the victim had sexual relations shortly before her death or that he was the last person to see the victim alive." *Id.*, ¶ 20-21.

¶ 25 The facts of this case are remarkably similar to those in *Escort*. As was the case there, the victim was strangled to death and left naked in an abandoned building. Likewise, each victim was a drug addict who was known to engage in prostitution. Crucially, in each case, the only physical evidence tying the defendant to the crime was the defendant's DNA found in the victim's body. And, while in each case the defendant matched the predominant DNA profile, additional male DNA profiles were identified. Finally, each case included testimony that the defendant had committed a separate sexual assault.

¶ 26 The DNA evidence in this case showed that defendant had anal and vaginal sexual contact with the L.B. at some time within 72 hours of her death. It would be speculative, however, to conclude that such sexual contact must have occurred immediately before her death. Guilt may not rest on such speculation. *Id.*, ¶ 21. (citing *People v. Martin*, 26 Ill. 2d 547, 551 (1963)).

¶ 27 The state argues that because L.B. was found naked with her legs spread, the sexual contact with defendant must have happened immediately before her death. However, that reasoning is equally speculative. In *Escort*, the victim was also found naked, and we held that even if the evidence tended to show that the defendant had sexual contact with the victim more recently than with the other males whose DNA was found on her clothing and person, that did not show that sexual contact between the defendant and victim must have happened immediately before her death. *Id.*, ¶ 20. The facts here are nearly identical, and lead to an equally similar conclusion.

¶ 28 The State argues, however, that the DNA evidence is not the only evidence of defendant's guilt. It also points to the testimony of C.F., the mucosal tears around L.B.'s anus, and defendant's denial of knowing or having sex with L.B., even in the face of DNA evidence to the contrary. However, given the speculative connection between the DNA evidence and the timing of L.B.'s death, those additional pieces of evidence taken together are still insufficient to establish guilt beyond a reasonable doubt.

¶ 29 The State also introduced other-crimes evidence in *Escort*. *Id.*, ¶ 11. The victim of a separate sexual assault testified that the defendant had choked her during the attack. *Id.* Even given the DNA evidence in that case, the other-crimes testimony was not sufficient to affirm the conviction in *Escort.* Neither is the similar testimony of C.F. sufficient here. As C.F. testified, she did not go to the police immediately after her assault because prostitutes "get abused and stuff. People take stuff from you also. And we just toss it up in the air as a loss. Because it go with the game, be out there, take risks. We get beat like that at times." The factual similarity of *Escort* corroborates that assessment of prostitution as a dangerous activity where violence is not uncommon. Viewing C.F.'s testimony in the light most favorable to the prosecution, as we must,

it does not establish that her assailant is the same person who killed L.B. any more than it establishes that defendant also killed the victim in *Escort*.

¶ 30 The State also argues that the mucosal tears around L.B.'s anus are conclusive proof that defendant committed a sexual assault. Although DNA from at least three male sources was found on L.B., the only DNA recovered from her anus matched that of defendant. Defendant argues that the testimony of Dr. Mosher-Woertz established that the tears could have had a natural cause, such as constipation. The State counters that because Dr. Mosher-Woertz did not observe any internal tears, and because of the circumstances of the discovery of L.B.'s strangled body, a reasonable fact finder could have concluded that she was the victim of sexual assault by defendant. The evidence does not, however, indicate how long before her death she sustained the mucosal tears, nor whether such injuries could have been caused by consensual anal intercourse.

¶ 31 Finally, the State urges the significance of defendant's denial that had sex with or knew L.B. There are a number of reasonable inferences that could be drawn from a man's denial of having sexual relations with or even knowing a murdered prostitute. Although the state argues that the clear inference is that defendant had a guilty conscience, it is totally plausible that defendant's guilty conscience stemmed from soliciting a prostitute rather than from committing a murder. After all, soliciting a prostitute, like murder or sexual assault, is a crime. 720 ILCS 5/11-14.1 (West 2008).

¶ 32 "[T]he trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Hall*, 194 Ill. 2d at 332. However, if after viewing the evidence in the light most favorable to the prosecution, "we are of the opinion that the evidence is insufficient to establish the defendant's guilt beyond a reasonable doubt, we must reverse the

conviction." *Smith*, 185 Ill. 2d at 541. Our examination of the record in this case leads us to conclude that the evidence introduced by the State was so weak as to create a reasonable doubt as to whether defendant committed sexual assault or the murder of L.B. Consequently, we reverse the defendant's conviction and sentence and, therefore, find no need to address any of his other claims of error. See *People v. Relerford*, 2017 IL 121094, ¶ 78.

¶ 33 CONCLUSION

¶ 34 Accordingly, we reverse the judgment of the circuit court.

¶ 35 Reversed.

¶ 36 JUSTICE CONNORS, dissenting:

¶ 37 Respectfully, I dissent. I am unable to join in the majority's disposition in this case in reversing the findings of the jury. I believe that the evidence against the defendant was sufficient to prove his guilt when all of the evidence and reasonable inferences that flow therefrom are considered in the light most favorable to the State. It is not our function to retry the defendant on appeal or substitute our judgment for that of the trier of fact. See *People v. Sutherland*, 223 Ill. 2d 187, 272 (2006).

¶ 38 The majority's focus on the *Escort* decision is troubling. I concurred in *Escort* and still agree it was correctly decided based on the facts and the law of that case. However, the majority's statement that "[t]he facts of this case are remarkably similar to those in *Escort*" (*supra* ¶ 25) is cause for concern. The scenarios of the sexual assaults and murder by strangulation of these two women have some similarity but the evidence differs greatly.

¶ 39 In *Escort*, there was testimony that the defendant's DNA was found in the vagina of the victim, as in the case at bar. *Escort*, 2017 IL App (1st) 151247, ¶¶ 3-4. However, the expert who testified in *Escort* opined that analysis of the sperm fraction of the material from the vaginal

swab sticks revealed that three individuals were the source. *Id.* ¶ 3. Also, a DNA match to a second male was found in the crotch of the victim's pantyhose. *Id.* There were also sperm cells and semen found in the victim's rectal area that could not have been fully attributable to a specific individual. *Id.* Finally, after examination of the victim in *Escort*, there was no DNA found in her oral cavity and no injuries to her genitalia. *Id.*

¶ 40 The facts in this case are much different. DNA from three males was found on the oral swabs taken from the victim (from which the defendant could not be excluded). However, only the defendant's DNA was found in both L.B.'s vagina and anus. Evidence of injury to L.B.'s anus, i.e. mucosal tears, existed, to which the medical examiner, Dr. Mosher-Woertz, testified that she "fear[ed] that these tears are more traumatic in nature than just a natural event," such as constipation.

¶ 41 The evidence of who may have been the murderer in *Escort* was hard to establish because of the multiple findings of DNA, as opposed to the case here, where only the defendant's DNA was in both L.B.'s vagina and anus. A reasonable inference would suggest that L.B. never got off her back after being sexually abused and brutally killed. Both L.B. and the victim in *Escort* were found naked and lying on their backs but the victim in *Escort* had drag marks on her back, which were described as large abrasions, consistent with her body having been dragged over a rough surface. *Id.* ¶ 10. In this case, L.B. had small marks on her back but nothing to suggest she was dragged to the location on the floor where she was found. I disagree with the majority's comment that it is "speculative" that the sexual contact with the defendant occurred immediately before her death. *Supra* ¶ 27. Instead, this jury could have reasonably inferred that L.B. breathed her last in the position where she was found naked after being abused and murdered by the defendant.

¶ 42 The other crimes evidence offered in *Escort* consisted of the defendant's sexual assault of the 13 year-old daughter of his then-girlfriend. *Id.* ¶ 7. However, the other crimes evidence, which was offered from C.F. was strikingly similar to the circumstances of this case. C.F., a sex worker like L.B., testified that in April 2010, while working as a prostitute near West 119th Street and South Harvard Avenue, not far from where L.B. was found, she was brutally sexually assaulted and strangled. C.F. identified the defendant as her attacker and stated that she looked at the defendant's face unobstructed from six to eight inches away before she lost consciousness. When C.F. awoke, she was naked on her back on the ground. C.F.'s testimony regarding her experience when the defendant assaulted her was remarkably similar to the facts of this case. "[T]he trier of fact is not required to disregard inferences which flow normally from the evidence and to search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Hall*, 194 Ill. 2d at 332.

¶ 43 As the majority acknowledges, we should not reverse a conviction "unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of [the] defendant's guilt." *Collins*, 214 Ill. 2d at 217; *supra* ¶ 19. The evidence presented at trial was not so unsatisfactory as to require reversal.