2018 IL App (1st) 153626-U

No. 1-15-3626

Order filed October 19. 2018

Sixth 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. 12 CR 06744
	)	
SALVADOR SEPULVEDA,	)	Honorable
	)	Erica L. Reddick,
Defendant-Appellant.	)	Judge, presiding.

PRESIDING JUSTICE DELORT delivered the judgment of the court.
Justices Connors and Harris concurred in the judgment.

ORDER

¶ 1 ***Held:*** We affirm defendant's convictions for three counts of aggravated criminal sexual assault and two counts of aggravated criminal sexual abuse, over his contention that the trial court erred in denying his motion to quash arrest and suppress evidence based on lack of probable cause to arrest him pursuant to an investigative alert. We reverse defendant's conviction for one count of aggravated criminal sexual abuse because the State conceded that it failed to prove the elements of the crime beyond a reasonable doubt, and we vacate the corresponding sentence.

¶ 2 Following a bench trial, defendant Salvador Sepulveda was found guilty of multiple counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30 (West 2012)), criminal sexual

assault (720 ILCS 5/11.1.20 (West 2012)), aggravated criminal sexual abuse (720 ILCS 5/11-1.60 (West 2012)), and criminal sexual abuse (720 ILCS 5/11-1.50 (West 2012)). He was sentenced to a total of 34 years' imprisonment. On appeal, defendant contends that the circuit court erred in denying his motion to quash his arrest and suppress his statement because the police lacked probable cause to arrest him. He also contends that the State failed to sustain his convictions for certain counts of aggravated criminal sexual abuse and criminal sexual abuse where the State failed to present evidence that he touched his mouth to the victim's mouth. We affirm in part as modified and reverse in part.

¶ 3 Defendant was charged by indictment with a total of 42 counts of criminal sexual conduct: 15 counts of aggravated criminal sexual assault (counts 1 - 15) (720 ILCS 5/11-1.30 (West 2012)), 6 counts of criminal sexual assault (counts 16 - 21) (720 ILCS 5/11.1.20 (West 2012)), 15 counts of aggravated criminal sexual abuse (counts 22 - 36) (720 ILCS 5/11-1.60 (West 2012)), and 6 counts of criminal sexual abuse (counts 37 - 42) (720 ILCS 5/11-1.50 (West 2012)). The counts were based on defendant's act of sexual penetration or sexual conduct upon F.S. and alleged different points of contact, including penis-to-vagina, penis-to-anus, penis-to-mouth, penis-to-hand, hand-to-breast, and mouth-to-mouth. As relevant here, 5 counts of aggravated criminal sexual abuse (counts 24, 27, 30, 33 and 36) and 2 counts of criminal sexual abuse (counts 39 and 42) alleged that defendant touched his mouth to F.S.'s mouth.

¶ 4 The State contended that defendant sexually assaulted F.S., the 22-year old daughter of his girlfriend, Migdalia Camacho. The assaults occurred between August 1 and August 18, 2011, while defendant was living with Camacho and her two children, F.S. and J.S., in an apartment on the 2600 block of West Walton Street in Chicago. The State's theory of the case was that F.S.'s mental disabilities prevented her from knowingly consenting to sexual conduct.

¶ 5 Before trial, defendant filed a motion to quash his arrest and suppress his statement. At the hearing on the motion, defendant testified that, on March 14, 2012, he was in front of his apartment building on the 2700 block of West Glenlake Avenue in Chicago. At approximately 6:45 a.m., a police car "rolled up" and a police officer placed him under arrest. Defendant testified that the police officers did not have a warrant for him and that he was not violating any local, state, or federal laws. The police officer brought defendant to a police station where he met with a detective and an assistant State's Attorney (ASA). Defendant spoke to the detective and ASA and signed a statement that he believed would be used against him at trial.

¶ 6 Sergeant Vance Bonner of the Chicago Police Department testified that, on March 14, 2012, he was assigned to the fugitive apprehension unit and learned that defendant was named as an offender in an investigative alert, which included F.S.'s allegations that defendant sexually assaulted her and sexually abused J.S. Sergeant Bonner went to the address on Glenlake with several members of the fugitive apprehension unit and arrested defendant.

¶ 7 On cross-examination, Sergeant Bonner conceded he did not have an arrest or search warrant for defendant and that defendant was not violating any local, state, or federal laws when he was arrested. Sergeant Bonner also admitted that the information he received regarding defendant was from an investigative alert that he did not issue. Sergeant Bonner acknowledged he did not speak to anyone about the allegations against defendant before arresting him.

¶ 8 Detective Jacqueline Mok testified that on August 21, 2011, she spoke to F.S.'s aunt, Carmen Rodriguez, at St. Mary of Nazareth Hospital. Three days later, F.S. was interviewed in a "victim sensitive interview" (VSI) format at the Child Advocacy Center (CAC). At the VSI, F.S. stated that defendant, her mother's boyfriend, committed three sexual assaults on her and also sexually abused J.S. while defendant was living in their apartment. F.S. described the incidents

as defendant placing his "pee pee" (penis) into her "cuco" (vagina). F.S. also said that defendant squeezed J.S.'s "pee pee" with his hands, making him scream.

¶ 9 Detective Mok also spoke to Carmen Rodriguez on August 21, 2011, who found letters in F.S.'s apartment with defendant's name. In addition, Detective Mok spoke to Rodriguez's brother Noel Camacho and several detectives, who were familiar with the case before the VSI. Defendant Mok noted the injuries to J.S. from the emergency room reports and waited for the lab reports before issuing the investigative alert. Based upon the entirety of information, Detective Mok issued an investigative alert for defendant.

¶ 10 On cross-examination, Detective Mok explained that she issued an investigative alert after hearing what F.S. alleged in the VSI and viewing the hospital reports noting visible signs of injury to J.S. Before she issued the alert, Detective Mok waited for the lab reports, which were inconclusive for semen. Finally, Detective Mok acknowledged she spoke to Camacho after both the VSI and issuing the investigative alert.

¶ 11 The trial court denied the motion to quash arrest and suppress statements, noting that it considered all the information Detective Mok provided at the time she issued the alert, including F.S.'s allegations and hospital records. Based on this information, the court found that police had probable cause to believe that defendant committed a crime and, thus, effectuate an arrest.

¶ 12 At trial, during the State's direct examination of F.S., the following colloquy pertinent to this appeal took place:

> "Q. [by assistant State's Attorney] "Okay. And how about your—How about [defendant's] mouth—did [defendant's] mouth ever do—touch his mouth to any part of your body?
>
> A. [F.S.] No."

¶ 13 After a bench trial, the circuit court found defendant guilty of aggravated criminal sexual abuse under counts 24, 27, 30, 33 and 36 and criminal sexual abuse under counts 39 and 42, finding that:

> "[T]he State has proved, with proof beyond a reasonable doubt each of the remaining allegations in the indictment. I just want to make sure. There was one allegation of mouth to hand. I am sorry, penis to hand. Any allegation of penis to hand, those the Court find have not been established. But all of the other allegations, the various ways in which the State alleges the defendant did sexually assault and sexually abuse the complaining witness, the Court does find the State has establish with proof beyond a reasonable doubt. There is a finding of guilty as to each of the remaining charges in the indictment."

The court also denied defendant's motion for a new trial.

¶ 14 After hearing arguments in both aggravation and mitigation, the court sentenced defendant to a total of 34 years' imprisonment. Specifically, the court sentenced him to 3 consecutive terms of 10 years' imprisonment for each of 3 counts of aggravated criminal sexual assault (counts 1 - 3), and merged the remaining counts of aggravated criminal sexual assault as follows: counts 4, 7, 10 and 13 merged into count 1; counts 5, 8, 11 and 14 merged into count 2; counts 6, 9 and 15 merged into count 3. The court also sentenced defendant to concurrent 4-year terms for 2 counts of aggravated criminal sexual abuse (counts 24 and 26) to be served consecutively to his sentences for aggravated criminal sexual assault. The remaining counts were merged into defendant's 34-year sentence. This appeal followed.

¶ 15 Defendant first contends that the court erred in denying his motion to quash his arrest and suppress his statement because the evidence showed that police lacked probable cause to arrest him. Specifically, defendant argues that F.S. had not identified him in a photo array and no one identified him as being the "Salvador" that was living with Camacho in the summer of 2011.

¶ 16 Motions to quash arrest and suppress evidence present questions of both fact and law. *People v. McCarty*, 223 Ill. 2d 109, 148 (2006). The trial court's factual findings are given great deference and will not be disturbed on review unless they are against the manifest weight of the evidence. However, the court's ruling on the motion is a question of law which we review *de novo*. *People v. Close*, 238 Ill. 2d 497, 504 (2010). In ruling on a motion to quash or suppress, it is the court's role to determine the credibility of witnesses and the weight to be given to their testimony. *People. v. Sutton*, 260 Ill. App. 3d 949, 956 (1994).

¶ 17 The fourth amendment of the United States Constitution, which applies to the states through the fourteenth amendment, protects all citizens from unreasonable searches and seizures in their homes, effects and persons. U.S. Const. amend. IV, XIV. A warrantless arrest will be deemed lawful only when probable cause to arrest has been proven. *People v. Jackson*, 232 Ill. 2d 246, 274-75 (2009). Probable cause exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the person arrested has committed a crime. *Id.* at 275. Whether probable cause exists depends on the totality of the circumstances at the time of the arrest. *People v. Grant*, 2013 IL 112734 ¶ 11. An officer's factual knowledge, based on his or her police experience, is relevant to determining probable cause. *Id*. "Whether probable cause exists is governed by commonsense considerations, and the calculation concerns the probability of criminal activity, rather than proof beyond a reasonable doubt." *Grant*, 2013 IL 112734, ¶ *11*; *People v Hopkins*, 235 Ill. 2d 453, 472 (2009).

¶ 18 Although an arrest may be based on information of which the arresting officer does not have personal knowledge, the State must show that the information the officer relied on was based on facts sufficient to show probable cause to support an arrest. *People v. Hyland,* 2012 IL App (1st) 110966 ¶ 22. An arresting officer may rely on information received in an official police communication, provided that the officer who issued the communication had probable cause to arrest. *People v. Lawson,* 298 Ill. App. 3d 997, 1001 (1998).

¶ 19 Here, we find that the State sufficiently established that the police had probable cause to arrest defendant for criminal sexual assault. At the hearing on the motion to quash arrest and suppress his statement, Sergeant Bonner testified that he was looking for defendant based on an investigative alert. Sergeant Bonner knew that defendant was wanted for "criminally sexually assaulting a handicapped young lady and criminally sexually abusing a handicapped young man." Detective Mok testified she met F.S. at the CAC on August 24, 2011 and observed a VSI conducted by a forensic interviewer. During this interview, F.S. stated that defendant, her mother's boyfriend, touched her "cuco," pointing to her vaginal area, with his penis on at least three occasions. F.S. also told the interviewer that defendant was in the bedroom with J.S. and he squeezed J.S.'s penis and pinched him, making him scream. F.S. also demonstrated what defendant did to J.S. with a hand gesture.

¶ 20 The totality of the circumstances known to Detective Mok at the time she issued the investigative alert sufficiently established probable cause and supported defendant's arrest. Stated differently, the facts known to Detective Mok were sufficient to lead a reasonably cautious person to believe that defendant committed a crime and Bonner was justified in relying on the alert to effectuate the arrest. *Jackson,* 232 Ill. 2d at 275.

¶ 21 In reaching this conclusion, we are not persuaded by defendant's reliance on *Brown v. Illinois,* 422 U.S. 590 (1975). In *Brown,* the detectives arrested the defendant to induce an investigation. *Brown,* 422 U.S. at 604. Here, unlike *Brown*, Sergeant Bonner had information that defendant was wanted for criminal sexual assault of F.S. and criminal sexual abuse of J.S. Additionally, Detective Mok's testimony supported her issuance of an investigative alert. Contrary to defendant's argument, the fact that she issued an investigative alert because she wanted to speak to defendant is of no consequence when probable cause existed for defendant's arrest. *People v. Hyland,* 2012 IL App (1st) 110966, ¶ 22.

¶ 22 Defendant next contends that the State failed to prove beyond a reasonable doubt the charges of aggravated criminal sexual abuse (counts 24, 27, 30, 33, and 36) and criminal sexual abuse (counts 39 and 42) when the State failed to present evidence that he touched his mouth to F.S.'s mouth. The trial court found defendant guilty of count 24 and merged the remaining counts into that count. Defendant requests that we reverse the conviction on count 24 and vacate his 4-year sentence.

¶ 23 The State concedes that the finding of guilt for five counts of aggravated criminal sexual abuse (counts 24, 27, 30, 33 and 36) and two counts of criminal sexual abuse (counts 39 and 42) should all be vacated because there was no evidence that defendant touched his mouth to F.S.'s mouth. The State also concedes that defendant's 4-year sentence on count 24 should be vacated and the mittimus corrected accordingly.

¶ 24 We accept the State's concession. We reverse defendant's finding of guilt for five counts of aggravated criminal sexual abuse (counts 24, 27, 30, 33 and 36) and two counts of criminal sexual abuse (counts 39 and 42), vacate the sentence of 4 years' imprisonment imposed on count 24, correct the mittimus accordingly pursuant to our authority under Supreme Court Rule 615(b)

(Ill. S. Ct. R. 615(b)), and affirm the judgment of the circuit court of Cook County in all other respects.

¶ 25 Affirmed in part as modified, and reversed in part.