2018 IL App (1st) 160049-U

No. 1-16-0049

Order filed May 14, 2018

FIRST 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. 14 CR 733
	)	
JOSE GONZALEZ,	)	Honorable
	)	Dennis J. Porter,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Pierce and Justice Mikva concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for aggravated criminal sexual abuse affirmed over his contention that the State failed to prove him guilty beyond a reasonable doubt.

¶ 2 Defendant Jose Gonzalez was found guilty of two counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(b), (c)(1)(i) (West 2010)) after a bench trial and sentenced to seven years' imprisonment. Defendant argues that the State failed to prove his guilt beyond a

reasonable doubt where its entire case came down to the testimony of the minor victim, M.C., who was inconsistent and impeached on material facts. We affirm.

¶ 3 Defendant was charged with two counts of aggravated criminal sexual abuse for, between June 1, 2011, and August 20, 2011, touching his hand to the vagina of M.C. for the purpose of his or her sexual arousal or gratification, where M.C. was under 18 years of age and defendant was M.C.'s grandfather (720 ILCS 5/11-1.60(b) (West 2010)) and M.C. was under 13 years of age and defendant was older than 17 years of age (720 ILCS 5/11-1.60(c)(1)(i) (West 2010)).[1]

¶ 4 Prior to trial, pursuant to section 115-10 of the Code of Criminal Procedure (725 ILCS 5/115-10 (West 2014)), the State moved to admit hearsay statements regarding statements M.C. made to her mother Elizabeth Gonzalez, Nurse Tamara Jackson, and Chicago Children's Advocacy Center (CAC) forensic interviewer Lauren Glazer regarding the incident. At the hearing on the motion, the State presented testimonial evidence from Assistant State's Attorney ("ASA") Melissa Samp, Nurse Jackson, and Gonzalez. The State also introduced a video recording of M.C.'s CAC interview by Glazer.

¶ 5 ASA Samp testified that, in August 2011, she was assigned to work at the CAC. Children are brought to the CAC to be interviewed and receive medical checkups, in order to pursue investigations for sexual assault and battery cases. Through a two-way mirror, Samp watched a CAC forensic interviewer conduct an interview of M.C., which was recorded. In the interview, M.C. made "a positive disclosure" that her grandfather touched her vagina. M.C. stated she had

[1] Defendant was charged with aggravated criminal sexual abuse between June 1, 2011, and August 20, 2011. During this period, effective July 1, 2011, the legislature renumbered the relevant statute from section 5/12-16 (720 ILCS 5/12-16 (West 2008)) to section 5/11-1.60 (720 ILCS 5/11-1.60 (West 2010)).

spoken with her mother and stepfather, Hoytuan Pierce, regarding the incident prior to the day of the interview.[2] All of the questions asked to M.C. were open ended.

¶ 6 Nurse Jackson testified that she is a sexual assault nurse examiner at St. Mary & Elizabeth Hospital, trained to conduct forensic interviews and examinations. On August 20, 2011, she and "Dr. Walton" examined M.C. in the emergency department of the hospital. M.C. was almost nine years old. Her mother was present for the physical examination but not for the forensic interview. M.C. told Jackson she was at the hospital because her grandfather had touched her vagina with his finger about a month earlier. Jackson's physical examination of M.C. was "unremarkable," revealing no tearing or physical damage.

¶ 7 Gonzalez testified that, on August 20, 2011, she noticed that her daughter was sleeping more often and "acting weird." She went to M.C.'s room and asked what was wrong with her. M.C. just laid on her bed, so Gonzalez left and went into the bathroom. M.C. then came into the bathroom crying. She told Gonzalez that, a week earlier, when she had gone to her grandmother's house, her grandfather had taken her into a room, pulled down her pants, and "showed him [*sic*] her private part."

¶ 8 Gonzalez brought M.C. to Resurrection Hospital to be examined. She did not tell M.C. why they were going or what she needed to tell the nurse or doctor. Gonzalez was present for M.C.'s examination, but not for the interview. She did not know what M.C. told the doctor and nurse, who then scheduled an interview at the CAC.

[2] In the record, Hoytuan Pierce is also referred to as Antoine Pearce. We will refer to him as Pierce.

¶ 9 On August 26, 2011, Gonzalez took M.C. to the CAC. She did not tell M.C. why they were going to the CAC or what to tell the interviewer, telling her only to "tell the people the same thing you told mommy." Gonzalez was not present for the CAC interview and never saw the video recording of it.

¶ 10 Gonzalez identified defendant as M.C.'s grandfather and alleged abuser. When M.C. told her what happened, she referred to defendant as "Papi" or "Poppy", because that is what M.C. and her siblings called defendant. Gonzalez testified that Pierce is M.C.'s stepfather, he and defendant got along with each other, and they never had any physical fights. Gonzalez had given the State's Attorney's office a written statement on December 10, 2013, because defendant was in custody. She had not seen him at any point from August of 2011 through December 2013.

¶ 11 For purposes of the hearing, the State admitted into evidence the video recording of M.C.'s CAC interview. In the recording, M.C. is seen alone in a room with an interviewer, identified in the video as Lauren Glazer. Under questioning, she tells Glazer that she is there because she went to the doctor. He told her she had to go there because she had told her mother that her grandfather touched her in "the wrong place." M.C. tells Glazer that, when she was at her grandfather's house and went into a room to get her Nintendo DS, he grabbed her, pulled her onto the bed, and touched her vagina with his finger. Her grandfather pulled her pants and underwear down to her knees. M.C. was hitting and kicking him, and he covered her mouth with his hand when she tried to scream. M.C. tells Glazer her grandfather's name is Jose Gonzalez and he does not live with her grandmother, but visits sometimes. Her grandfather told M.C. not to tell anyone what happened or he would beat her up. The first person M.C. told regarding the incident was her mother, after her mother and stepfather both "told me had anybody touched

me." M.C. acknowledges that both her mother and stepfather "asked" her the question before she told her mother.

¶ 12 The court found the statements that M.C. made to the three witnesses contained sufficient safeguards of reliability and granted the State's motion to admit these statements.

¶ 13 At trial, then 14-year old M.C. identified defendant as her grandfather. She was nine years old in the summer of 2011 and would visit her grandmother's house while her mother was at work. One day that summer, defendant grabbed M.C. as she walked out of her grandmother's room. He put her on the bed, pulled her pants and underwear down to her knees, and started touching the outside of her vagina. Defendant touched her with one hand, and covered her mouth with the other to prevent her from screaming, telling her to "shut up." Eventually, M.C. was able to get up. She pulled up her pants while defendant threatened to hit her if she told anyone.

¶ 14 About a week later, M.C. told her mother about the incident while in the bathroom of their home. She told her mother because her mother had asked her how she was feeling, and M.C. realized that what had happened to her was wrong. Her mother called the police, and an officer came to talk to her. M.C. acknowledged the police report stated that she told the officer defendant had penetrated her and her clothes were on. She testified she had not said that. M.C. went to a hospital where she spoke with a nurse and was examined by a doctor. She was asked questions about what happened, but did not remember telling the nurse what happened. Four days later, she went to the CAC to be interviewed.

¶ 15 On cross-examination, M.C. stated that Pierce is her stepfather, he got along with defendant, and she was not aware of them getting into any fights. M.C. did not tell Pierce about the incident, and no one else was present when she told her mother. Pierce did not tell her to

make up the story about the incident. In the years following the incident, M.C. saw defendant walking down the block once and told her mom about it.

¶ 16 Gonzalez's testimony at trial was similar to her pre-trial testimony. She noticed M.C. sleeping more often and asked what was wrong. M.C. told her that "Papi touched me". Gonzalez identified defendant as M.C.'s "papi." Gonzalez called the police and brought M.C. to the hospital and CAC. She testified that defendant was over 17 years old in 2011. She did not tell M.C. what to say at the CAC. Her handwritten statement to the police stated that M.C. said "Mommy I need to talk to you." Gonzalez said this occurred after she asked M.C. what was wrong.

¶ 17 Gonzalez testified Pierce is M.C.'s stepfather, he gets along with defendant, and they have never fought physically. Gonzalez did not know whether M.C. told Pierce about the incident. Gonzalez had seen defendant around the neighborhood between 2011 and 2013. She had a housewarming party in 2013 where defendant tried to come in and she called the police. Defense counsel introduced three photographs with the same backdrop. In one of the pictures, Gonzalez identified defendant posed with her sons and her mother. M.C. was not in the pictures, and Gonzalez said the photographs were not from her housewarming party. She stated that the friend who took the photographs was not taking pictures at the housewarming.

¶ 18 The parties stipulated to the admission of the CAC interview video recording and Samp's and Jackson's testimony from the section 115-10 hearing. Following a recess in which the court viewed the CAC interview video "again," it denied defendant's motion for a directed finding.

¶ 19 Chicago police officer Juwana Williams testified for the defense. Williams testified that he received a call to go to a house where he spoke with M.C. and created a report. Williams'

report states that M.C.'s clothes were on during the incident and that the offender threw her on a bed and penetrated her vagina with his fingers. Williams had written less than 10 sexual assault reports, was not trained in sexual assault interviewing, and had never seen a child interviewed regarding an alleged sexual assault. During the interview, M.C. was shy and scared. She was "crying," and Williams acknowledged it was difficult to get information at times. Although Williams used the word "penetrated" in his report, he did not remember whether M.C. actually said it. He did remember that she told him her grandfather "used his fingers."

¶ 20 Lydia Santana testified that she is defendant's wife and M.C.'s grandmother. She stated that Pierce and defendant did not get along and fought physically once because defendant did not like the way Pierce "is." Defendant attended family parties between 2011 and 2013, including Gonzalez's housewarming party. The three photographs were from Gonzalez's housewarming party in October 2013, which Santana attended. M.C. was not at the party. Gonzalez's friend had taken the photographs and Gonzalez gave them to Santana. Gonzalez had written "December 7" on the back of the photographs. Santana had no personal knowledge of the alleged abuse.

¶ 21 Alex Gonzalez testified that he was defendant's son and M.C.'s uncle. He stated that Pierce and defendant did not get along and had fought physically at a party at Santana's house. He saw defendant at Santana's house between 2011 and 2013, and Gonzalez had been present at the time. There had been multiple fights between Pierce and defendant, with the most recent being in 2012.

¶ 22 Defendant introduced and the State stipulated that if Carolyn Brown was called to testify, she would testify that she was a court reporter for the section 115-10 hearing in which Elizabeth Gonzalez testified under oath. Brown would testify that her record of the testimony that day was

true and accurate and that Gonzalez testified that she had not seen defendant at any point from August 2011 until December 2013.

¶ 23 In closing, defense counsel argued that M.C.'s testimony raised a question about whether she was coached in her testimony, which would have created a reasonable doubt as to defendant's guilt. Defense counsel argued that Gonzalez's testimony that Pierce had no idea of what happened and never spoke to M.C. about it was impeached by the video, in which M.C. states that Gonzalez and Pierce "told" her "did anyone touch [her]." Counsel argued this showed not only that Gonzalez was lying but that, because there was a big difference between being told and being asked, this demonstrated she coached her daughter regarding what she wanted her to say.

¶ 24 The trial court found defendant guilty of both counts. It stated that "this case comes down to really the credibility of M.C." It found M.C.'s statements to the CAC were not "appreciably different" from her testimony in court, and stated it believed she was telling the truth. The court found no evidence that M.C. was coached "on account of this fight" between Pierce and defendant, concluding "[t]hat is just absolute speculation." It found M.C. was not impeached, stating the issue of whether her clothes were removed entirely versus down around her knees was semantics rather than actual impeachment. The court subsequently denied defendant's motion to reconsider, merged Count 2 with Count 1, and sentenced defendant to seven years' imprisonment.

¶ 25 Defendant appeals his conviction, arguing that the State failed to prove him guilty beyond a reasonable doubt because the sole basis for his conviction was M.C.'s testimony, which was "inconsistent and repeatedly impeached on material facts."

¶ 26 When reviewing the sufficiency of the evidence, this court will not retry the defendant. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, we must consider " '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.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). A reviewing court must draw all reasonable inferences from the record in favor of the State. *Davison*, 233 Ill. 2d at 43. This standard gives full play to the responsibility of the trier of fact to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts. *People v. Howery*, 178 Ill. 2d 1, 38 (1997). Accordingly, 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. Cooper*, 194 Ill. 2d 419, 430-31 (2000). A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 27 To prove defendant guilty of aggravated criminal sexual abuse, the State had to prove that: (1) defendant knowingly committed an act of sexual conduct on M.C., (2) M.C. was under 18 years of age, and (3) defendant was a family member. 720 ILCS 5/11-1.60(b) (West 2010). Sexual conduct is defined as "any knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus or breast of the victim or accused, or any part of the body of a child under 13 years of age *** for the purpose of sexual gratification or arousal of the victim or accused." 720 ILCS 5/11-0.1 (West 2010).

¶ 28 The evidence that M.C. was nine years old at the time of the offense and defendant was her family member is undisputed. Defendant challenges only the sufficiency of the evidence to prove beyond a reasonable doubt that he committed an act of sexual conduct on M.C.

¶ 29 We find the evidence sufficient to prove defendant guilty of the aggravated criminal sexual abuse of his minor granddaughter beyond a reasonable doubt. M.C. testified that defendant grabbed her, pulled her onto a bed, pulled her pants and underwear down, and touched her vagina. The positive testimony of single, credible witness is sufficient to support a conviction for aggravated criminal sexual abuse (*People v. Schott*, 145 Ill. 2d 188, 202-3 (1999)), and the trial court found M.C. believable. The trial court was in the superior position to assess the credibility of the witnesses and we defer to the court's determination. *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24. Thus, M.C.'s testimony, standing alone, shows defendant touched her sex organ. Further, her testimony is corroborated through what she told her mother, Nurse Jackson, and the CAC interviewer within weeks of the incident.[3] This evidence therefore supports a finding that defendant knowingly touched M.C.'s sex organ.

¶ 30 It also supports a finding that defendant touched M.C.'s sex organ with the intent to arouse or seek sexual gratification. Intent to arouse or seek sexual gratification can be proven by circumstantial evidence (*People v. Balle*, 234 Ill. App. 3d 804, 813 (1992)) or "inferred solely from the nature of the act" (*People v. Burton*, 399 Ill. App. 3d 809, 813 (2010)). We find that, from the very nature of the act at issue here, defendant's touching M.C.'s vagina, the trial court could reasonably infer that defendant performed the act for sexual arousal or gratification. See *People v. Bailey*, 311 Ill. App. 3d 265, 267-69 (2000) (court reasonably inferred intent for sexual

[3] Defendant does not challenge the admission of M.C.'s hearsay statements at trial.

gratification where victim awoke to find defendant rubbing her vagina through her pants). Further, from the fact that he covered M.C.'s mouth to prevent her from screaming, it can reasonably be inferred that he committed the act for his own gratification. In sum, the evidence is ample to support the trial court's finding that defendant made sexual contact with M.C.'s vagina with the intent to arouse or seek sexual gratification and thus was proven guilty of aggravated criminal sexual abuse beyond a reasonable doubt.

¶ 31 Nevertheless, defendant argues that M.C.'s testimony does not support his conviction because it was inconsistent and impeached regarding material issues. He points out that M.C. told Officer Williams that she was fully clothed during the abuse and that defendant penetrated her but, in her trial testimony and statements to her mother, Nurse Jackson, and Glazer, she asserted that defendant pulled her clothes down and touched her vagina. Defendant also points to M.C.'s inconsistent statements and testimony regarding when and whether she spoke to Pierce, or whether he questioned her before the CAC interview.

¶ 32 As an initial matter, we address the standard of review we must apply in assessing the sufficiency of M.C.'s testimony. In defendant's opening brief, citing *People v. Mack*, 2016 IL App (5th) 130294, ¶ 28, he asserts that, in aggravated sexual abuse cases where the defendant denies the charges, a conviction will be upheld where the complainant's testimony is clear and convincing or substantially corroborated by other evidence. This was the standard of review for sex-offense cases for many years, adding an additional requirement for the testimony of sex-offense victims to the State's burden to prove the defendant guilty beyond a reasonable doubt. *People v. Schott*, 145 Ill. 2d 188, 198, 202 (1991). But, as the State points out in its response and defendant concedes in his reply brief, our supreme court rejected this standard long ago in 1991,

holding it should no longer be used. *Id* at 202. Instead, the reasonable doubt test governs an appellant's claim of evidentiary insufficiency in sex-offense cases, regardless of the nature of the evidence. *Id* at 203. Thus, as defendant correctly points out in his reply, the complainant's testimony in a sex-offense case, as in any other criminal case, "need not be unimpeached, uncontradicted, crystal clear, or perfect," as long as any inconsistencies in the testimony do not detract from the reasonableness of the testimony as a whole. *People v. Garcia*, 2012 IL App (1st) 103590, ¶ 84 (quoting *People v. Soler*, 228 Ill. App. 3d 183, 200 (1992).

¶ 33 In a bench trial, it is for the trial court to judge the credibility of witnesses, determine the weight to be accorded their testimony, and draw inferences from the testimony. *Soler*, 228 Ill. App. 3d at 199. Here, the trial court found that M.C.'s testimony was similar to her CAC interview, and the issue of whether she was clothed or half-undressed was more semantics than actual impeachment. It stated it believed she was telling the truth. The trial court was in the "superior position to assess the credibility of witnesses," and we must give proper deference to that conclusion. *People v. Vaughn*, 2011 IL App (1st) 092834, ¶ 24.

¶ 34 Defendant is correct that this deference does not require a mindless rubber-stamp on every bench trial guilty verdict. See *People v. Hernandez*, 312 Ill. App. 3d 1032, 1037 (2000). However, viewing the evidence in the light most favorable to the State as we must, we find M.C.'s testimony was not so inconsistent or implausible that no rational trier of fact could conclude she was telling the truth when she testified defendant touched her vagina. See *Cunningham*, 212 Ill. 2d at 279-80. We therefore defer to the trial court's determination that M.C. was telling the truth.

¶ 35 Defendant also argues that the State did not prove him guilty beyond a reasonable doubt because his theory that Pierce coached M.C. into making the allegations against defendant was credible and unimpeached. He asserts that, because the trial court never made a credibility finding regarding Elizabeth Gonzalez, her testimony regarding Pierce and defendant getting along is unreliable.

¶ 36 Defendant's theory that Pierce and/or Gonzalez coached M.C. to make up the allegation against defendant because of Pierce's "fight" with defendant is, as the trial court found, "just absolute speculation." It is our function to examine the evidence in the record to determine whether any rational trier of fact could have found the elements of the offense beyond a reasonable doubt, not to engage in speculation. *Garcia*, 2012 IL App (1st) 103590, ¶ 84. Here, M.C. testified specifically that Pierce never asked her or told her to make up a story about defendant, and that the events to which she testified "actually happened." The trial court found M.C. testified truthfully, and on this record, her testimony is sufficient to support defendant's conviction. See *People v. Le*, 346 Ill. App. 3d 41, 50 (2004) (a criminal sexual assault conviction can be sustained on the victim's testimony alone).

¶ 37 For the foregoing reasons, the judgment of the circuit court of Cook County is affirmed.

¶ 38 Affirmed.