

2019 IL App (1st) 162391-U

No. 1-16-2391

Order filed August 7, 2019

Third Division

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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 12373
)	
JUAN MEJIA,)	Honorable
)	Angela Munari Petrone,
Defendant-Appellant.)	Judge, presiding.

JUSTICE COBBS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Howse concurred in the judgment.

ORDER

¶ 1 *Held:* Defendant's conviction for predatory criminal sexual assault of a child affirmed where the evidence proved beyond a reasonable doubt that defendant intentionally and knowingly sexually penetrated the child.

¶ 2 Following a bench trial, defendant Juan Mejia was convicted of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2010)), criminal sexual assault (720 ILCS 5/11-1.20(a)(4) (West 2012)), and aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2010)) for conduct spanning from 2007 to 2012, and was sentenced to a combined term of

47 years imprisonment.¹ On appeal, defendant argues that one of his convictions for predatory criminal sexual assault of a child should be reversed where the State failed to prove beyond a reasonable doubt that he intentionally or knowingly made contact between his penis and the victim's vagina.² We affirm.

¶ 3 Defendant was charged with 13 counts arising from sexual acts defendant engaged in with his then-girlfriend's minor daughter, M.L., and went to trial on four counts of predatory criminal sexual assault of a child, one count of criminal sexual assault, and two counts of aggravated criminal sexual abuse. Relevant here is count 8, which charged that, on or about October 23, 2009, and continuing through June 30, 2011, defendant knowingly committed an act of sexual penetration upon M.L., specifically contact between defendant's penis and M.L.'s vagina, and, at the time, defendant was older than 17 years of age and M.L. was under 13 years old.

¶ 4 At trial, M.L. testified that defendant began dating her mother when she was four or five and she thought of him as her father. M.L. was born in October 1998. Defendant did not live with M.L. and her mother, but she saw him "daily" when he picked her up after school and took her to his house because her mother was still at work.

¶ 5 Defendant engaged in a number of sexual acts with M.L. when she was between the ages of 9 and 13. Defendant touched his penis to M.L.'s thighs more than 30 times beginning when

¹ The statutes under which defendant was charged for predatory criminal sexual assault of a child and aggravated criminal sexual abuse were renumbered in 2011. 720 ILCS 5/12-14.1(a)(1) (West 2010) renumbered as 720 ILCS 5/11-1.40(a)(1) (West 2012) (eff. July 1, 2011); 720 ILCS 5/12-16(c)(1)(i) (West 2010) renumbered as 720 ILCS 5/11-1.60(c)(1) (West 2012) (eff. July 1, 2011); see Pub. Act 96-1551, Art. 2, § 5.

² Defendant also argued the court improperly assessed a \$5 electronic citation fee against him, but withdrew this claim in his reply brief citing Illinois Supreme Court Rule 472(c).

she was 9 years old. The first time it happened, defendant picked M.L. up from school, and went to Burger King before going to his house, where defendant went to his bedroom and M.L. was in the kitchen. When M.L. walked into defendant's bedroom, he was "naked" and he told M.L. "to lay down." After M.L. laid down, defendant took her clothes off, "laid on top of" her, and began "humping" her with his penis between her thighs. M.L. testified that the defendant's penis touched her inner thighs and pointed to an area "a couple of inches down from her vagina."

¶ 6 Twice when M.L. was 11, defendant touched her vagina with his penis during this "humping." The first time, defendant was "humping" between her thighs and his penis "ended up touching [her] vagina *** between [her] lips." M.L. described it as not painful. Defendant told M.L. not to tell anyone or he would hurt her family. The second time, defendant was on top of M.L. "humping between [her] thighs with his penis and then [she] felt a little pain" and pushed him off. Neither of them was wearing any clothing when this happened. M.L. described the difference between the two events as "[t]he first time it was just between [her] lips and the second time it went deeper into [her] lips."

¶ 7 M.L. described other sexual acts defendant performed on her. More than twice, defendant placed his hands on M.L.'s breasts both over and under her clothes. At least five times beginning when she was 10 years old, defendant put his penis inside M.L.'s mouth. M.L. described his penis as having "extra skin" and "[w]hen it got hard, he didn't have that extra skin anymore." At least five times, beginning when M.L. was 10 years old, defendant touched M.L.'s vagina with his fingers. Defendant "put his fingers between [M.L.'s] lips." M.L. said it felt as if she were "wiping [herself] in the bathroom." Defendant touched M.L.'s vagina with his mouth at least five times beginning when M.L. was 11.

¶ 8 Defendant also took pictures of M.L. with his phone, which M.L. identified at trial. These pictures depict defendant, defendant and M.L., M.L. herself, a person's buttocks in underwear, and a person in underwear and a t-shirt lying on a bed. Subsequently, these pictures were admitted into evidence. M.L. remembered defendant taking these pictures, and knew they were pictures of her because she "kn[ew] her body figure." Defendant bought M.L. an iPod and a Nintendo DSI, so that she "wouldn't tell [her] mom."

¶ 9 On May 30, 2012, M.L. went to a police station with her mother to tell the police about these events. M.L. admitted that she did not tell the officer everything that happened between her and defendant, because she did not feel comfortable saying everything in front of her mother. Before telling her mother and the police, M.L. had not told anyone about what defendant was doing to her because she was afraid that defendant would hurt her family. M.L. denied ever speaking with defendant about sex, offering to have sex with defendant if he bought her a movie, or ever walking in on defendant when he was in the shower and asking him to show her his penis.

¶ 10 On cross-examination, M.L. admitted that, when she was younger, her mother asked her if defendant touched her inappropriately and M.L. told her "no." M.L. also never told defendant's roommate, defendant's brother, or any of her doctors or nurses about what defendant was doing. When she went to the police in May 2012, M.L. did not remember whether she told the police that defendant wanted to have intercourse with her, but the act never occurred. M.L. admitted telling the officer that, on numerous occasions, defendant placed his penis very close to her vagina but never inserted it. She explained she said that because her mother was with her, and she did not feel comfortable telling her mother. M.L. denied ever using defendant's PIN at

his bank to withdraw money from his account. On redirect, M.L. testified that she never asked defendant to take the pictures of her on his cell phone.

¶ 11 Dr. Michelle Lorand testified that she is a pediatrician, board certified in child abuse pediatrics. The parties stipulated that Dr. Lorand was qualified as an expert in pediatrics and child sexual abuse. Dr. Lorand testified that she saw M.L. on July 16, 2012, and M.L. told her that her mother found out that her ex-boyfriend had been abusing her and called the police. Dr. Lorand took M.L.'s medical history, and M.L. told her that "he" put his penis between her thighs, and "white stuff would come out." M.L. also told her that "he" put his penis in her mouth and "sometimes white stuff would come out of it," put his mouth on her privates, touched her breasts, and two times put his penis inside of her. The last time this happened was on May 3, 2012, when he put his penis in her mouth.

¶ 12 Dr. Lorand conducted a genital exam of M.L. Dr. Lorand found a transection of her hymen at the 7 o'clock position. She defined transection to mean "to cut or separate into two pieces" and the "7 o'clock position" to mean "down toward her rectum and a little bit to the child's right." Transections in that position are "very significant for penetrating-type trauma to the hymen." It is an area "that tears easily with pressure posteriorly on the hymen." Dr. Lorand's diagnosis as to M.L.'s condition was that "she gave an outcry of ongoing chronic sexual abuse and that she had physical findings compatible with her history." Dr. Lorand specified that the only accidental types of penetration she had ever seen were when children had "known straddle injuries" where they fell on something sticking straight up in the air, for example a Barbie doll leg. In those cases, children go to the hospital for the injury very quickly. However, the trauma to

M.L.'s hymen being caused by sexual penetration fit with her history, and could have been caused by somebody inserting a penis into her vagina.

¶ 13 On cross-examination Dr. Lorand admitted that she did not specifically ask if M.L. had ever had any prior genital examinations. She also admitted that incidents exist where these types of transections are caused by non-penis intrusions, but such incidents are "very rare." Dr. Lorand was able to make her affirmative diagnosis that M.L. was sexually abused by having a penis inserted into her hymen based upon both M.L.'s history and physical exam. Dr. Lorand admitted she did not ask M.L. about a straddle injury.

¶ 14 Detective Jose Castaneda testified that he interviewed defendant, because defendant spoke Spanish, and Castaneda was fluent in Spanish. Castaneda conducted the interview solely in Spanish, in a processing room at the police station. Castaneda recited the Miranda rights one at a time from memory and asked if defendant understood each right; defendant stated that he did.

¶ 15 Defendant told Castaneda that M.L. was the daughter of his then-girlfriend, and was between the ages of 8 and 12 at the time of the incidents. Defendant did not live with M.L.'s mother, and considered M.L. to be a daughter. When M.L. was approximately 8 years old, she offered to have sex with defendant in exchange for his buying her a movie. He told her "no." On another occasion, M.L. asked defendant about kissing "amorously" or how people made love. M.L. once touched him on his genitals with her hand. Castaneda specified that "genitals" was his own word he used to describe the part of defendant's body defendant said M.L. touched.

¶ 16 Defendant told Castaneda that, on May 3, 2012, defendant ordered pizza at his home and he and M.L. went into his bedroom. In the bedroom, they lay together, and M.L. placed her leg over his and asked him about making love. She straddled him and started to rub her genitals

against his, and defendant grabbed her by the waist and moved her body against his genitals to show her how to make love. During this time, M.L. reached over to defendant, grabbed him by the face, and kissed him, biting his lip in the process. Defendant pushed her away. Defendant also described another incident to Castaneda, which occurred “a little while” before May 3. Defendant was showering when M.L. came into the bathroom and asked to see his penis. According to Castaneda, defendant stated that he “pretty much showed [M.L.] his penis pulling back on his foreskin of his penis to show the head of his penis to her.” When M.L. then attempted to touch defendant’s penis, he turned away from her and called out to his roommate.

¶ 17 Castaneda learned in his investigation that defendant had taken pictures of M.L. in her bra and underwear, and confronted defendant about this. Defendant told Castaneda that he bought M.L. the bra and underwear and M.L. wanted to see how she looked in it. Defendant signed a consent form in Spanish giving Castaneda permission to examine his cell phone. These pictures were retrieved from the cell phone using forensic tools.

¶ 18 On cross-examination, Castaneda stated that initially defendant denied being inappropriate toward M.L., but later admitted he had some inappropriate behavior toward her. Castaneda admitted that the interviews were not recorded and he took notes during this time which are in his own words, but added verbatim quotes from defendant using quotation marks. Castaneda also admitted that the use of the word “genitals” and the description of the incident in the bathroom were not in defendant’s words, but some of the description of the incident where M.L. straddled defendant was verbatim. Defendant did not review Castaneda’s notes for accuracy. Castaneda denied that he told defendant he would let him go if defendant admitted to

having inappropriate relations with M.L. Castaneda also denied that he put his testicles in defendant's face during the interview.

¶ 19 The court denied defendant's motion for a directed finding, and specified that it was not giving much weight, if any, to Castaneda's testimony regarding defendant's admission.

¶ 20 Defendant testified through an interpreter that he first met M.L. in 2003. Defendant denied doing the sexual acts M.L. described in her testimony, and testified that he never touched her sexually during the course of his relationship with her. Defendant recalled Castaneda asking him questions, but Castaneda did not read defendant his Miranda rights. Castaneda placed his testicles in defendant's face after the interview. After defendant was arrested, someone took money from his bank account without his authorization while he was incarcerated.

¶ 21 On cross-examination, defendant stated that he picked M.L. up from school and took her to his apartment "possibly 10 times" and M.L.'s mother was not with him. Defendant denied that M.L. ever asked him about sexual acts. Defendant was shown the form Castaneda had given him seeking permission to search his cell phone. The form was in Spanish. Defendant could read Spanish "very little" because he "didn't have school." He then read the first sentence of the form out loud in open court. Defendant testified variously that he did not read the form at the police station because he both did not read Spanish and he did not have his glasses, did not sign the form, and did sign the form "because he had nothing to hide."

¶ 22 Defendant denied that he ever went to a separate room with M.L. for privacy, and stated that there were no doors in the house, and the curtain covering his bedroom was always folded up. On May 3, 2012, M.L.'s mother dropped M.L. at defendant's house, which surprised defendant because he thought her mother would stay. Earlier, M.L. had called defendant telling

him to apologize to her mother, who ended their relationship. She told him she wanted her “mami” and “papi” together. At his house, they ate pizza, and defendant and M.L. went into his bedroom.

¶ 23 Defendant admitted Castaneda did not threaten him, but did make him a promise that, if “[defendant] would tell him two lies, he would let [defendant] go.” If Castaneda discovered they were true, he would arrest defendant again, but if not, then he would not “bother” defendant again. Castaneda asked defendant if he had done the things he was being accused of, and defendant said no. Castaneda then said “you say no, but I am saying yes,” and got on top of the table and put his testicles in defendant’s face. Defendant demonstrated for the court how he tried to protect himself by putting his right hand over his mouth but then switched to his left hand, acknowledging his right hand was “tied down” when this happened. Defendant told his attorney about Castaneda’s conduct six months later, and she told him not to say anything. On January 21, 2016, nearly four years later and after the case was set for trial, defendant filed a formal complaint against Castaneda for the first time.

¶ 24 On redirect, defendant was shown pictures from his cell phone. Defendant identified the subjects of the pictures as his girlfriend, M.L.’s mother. On recross, defendant denied telling Castaneda that M.L. asked him to take the pictures.

¶ 25 After the parties concluded defendant’s examination, defendant requested the opportunity to speak to the court directly. Defense counsel informed the court that she had no further questions for him and would not be recalling him as a witness. The court permitted defendant to make a statement against the advice of defense counsel. Defendant then spoke for approximately 40 minutes.

¶ 26 In his statement, defendant informed the court that when he ended his relationship with M.L.'s mother, she threatened him, telling him that he "would be sorry." The purpose behind the "false accusations" was to commit a "planned robbery" of defendant's property. "They invented" that he touched M.L. in order to put him "in jail so that they could take [his] things." Money was withdrawn from defendant's bank account after he was arrested. M.L. was the only other person who knew defendant's PIN and defendant's roommate was the only person who had defendant's debit card. Defendant, *inter alia*, criticized M.L.'s testimony, asserted the State was feeding M.L. answers, and commented that M.L.'s sister was jealous and did not want him in the house. Defendant tendered a bank statement to the court showing five debits totaling \$2306 between June 25, 2012, and July 6, 2012.

¶ 27 In closing, defense counsel argued that the allegations against defendant were fabricated. The trial court found defendant guilty of three counts of predatory criminal sexual assault of a minor, two counts of aggravated criminal sexual abuse, and one count of criminal sexual assault. The court found defendant not guilty of one count of predatory criminal sexual assault charging that defendant inserted his finger into M.L.'s vagina, because M.L. testified that it felt like she was wiping herself in the bathroom and the court was not satisfied that the element of intrusion was proved beyond a reasonable doubt.

¶ 28 The court found M.L. to be a credible witness, believing her explanation for not making an immediate outcry, and noting that M.L. finally divulged the acts "as the defendant's behavior grew increasingly sexual." The court noted defendant's acts "progressed from touching her breasts to touching her leg with his penis, putting his penis in her mouth, putting his mouth to her vagina, putting his penis to her vagina." The court did not find it impeaching that M.L. told

police at the station that defendant attempted but did not insert his penis into her vagina but later testified it happened two times. The court noted M.L. testified the first time did not hurt as defendant's penis went between the lips of her vagina but the second time the penis went deeper into her lips. The court accepted M.L.'s "reasonable explanation" that she was uncomfortable telling "everything that occurred" in front of her mother.

¶ 29 The court found that M.L.'s allegations were corroborated by Dr. Lorand's testimony, and there was no testimony or outcry regarding any straddle injury which could have caused the injury to M.L.'s hymen. Additionally, defendant took pictures of M.L. in her underwear. The court found the pictures showed defendant's interest in M.L.'s "genital areas," and did not accept that these pictures were of M.L.'s mother. The court stated it did not give any weight to defendant's statement to Castaneda, because much of it was in Castaneda's own words rather than defendant's. The court gave no credence to defendant's testimony regarding Castaneda's placing his testicles in defendant's face, finding this testimony to be "nonsensical and contradictory." The court found defendant's testimony regarding M.L.'s knowledge of defendant's PIN "makes no sense" because M.L. was a child.

¶ 30 The court subsequently denied defendant's motion and supplemental motion for a new trial, commenting that defendant received a fair trial and was allowed to make a statement to tell the court whatever he wanted to let it know before it ruled. The court sentenced defendant to consecutive sentences totaling 47 years' imprisonment.

¶ 31 Defendant argues on appeal that this court should reverse one of his convictions for predatory criminal sexual assault of a child (Count 8), because the State failed to prove beyond a

reasonable doubt that defendant acted intentionally or knowingly during the two times his penis touched M.L.'s vagina. Defendant requests that we vacate his 11-year sentence for this count.

¶ 32 The standard of review in challenging the sufficiency of the evidence is “whether, viewing the evidence in the light most favorable to the State, ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” *People v. Belknap*, 2014 IL 117094, ¶ 67 (quoting *People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The trier of fact, here the trial judge, has the responsibility to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from basic facts to ultimate facts. *People v. Brown*, 2013 IL 114196, ¶ 48. Accordingly, this court will not retry the evidence or substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or credibility of witnesses. *Id.*

¶ 33 In order to prove defendant guilty of predatory criminal sexual assault of a child as charged, the State needed to establish that on or about October 23, 2009, through June 30, 2011, defendant committed an act of sexual penetration with M.L., and that he was at least 17 years of age and M.L. was under 13 years of age when he committed the act. 720 ILCS 5/12-14.1(a)(1) (West 2010).³ At the time of the offense, “sexual penetration” was defined as “any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person, or any intrusion, however slight, of any part of the body of one person *** into the sex organ or anus of another person.” 720 ILCS 5/12-12(f) (West 2010). Defendant does not challenge the age elements of the offense, nor does he argue his penis did not contact

³ The statute was amended in 2014 to prohibit “an act of contact, however slight, between the sex organ and anus of one person and the part of the body of another for the purpose of sexual gratification or arousal of the victim or the accused, or an act of sexual penetration” with a victim under 13 years of age. 720 ILCS 5/11-1.40(a)(1) (West 2014).

M.L.'s vagina. His sole argument is that the State failed to prove he intentionally or knowingly made contact with M.L.'s vagina.

¶ 34 The statute for predatory criminal sexual assault of a child does not specify a mental state applicable to the offense. Typically, where a statute defining an offense does not prescribe a particular mental state, any mental state (intent, knowledge, or recklessness) is applicable. 720 ILCS 5/4-3(b) (West 2010). Acts of “sexual penetration” are inherently sexual in nature, and, therefore, can neither be unintentional or inadvertent. *People v. Kolton*, 219 Ill. 2d 353, 370 (2006). Accordingly, courts have ruled that acts of sexual penetration require only mental states of intent or knowledge, because a court implying the mental state of recklessness to such an act would lead to an absurd result. *People v. Douglas*, 381 Ill. App. 3d 1067, 1073 (2008).

¶ 35 “A person intends, or acts intentionally or with intent, to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct.” 720 ILCS 5/4-4 (West 2010). A defendant is presumed to intend the natural and probable consequences of his acts. *People v. Terrell*, 132 Ill. 2d 178, 204 (1989). A person acts knowingly where he is “consciously aware” of the nature of his conduct and that his conduct is practically certain to cause a particular result. 720 ILCS 5/4-5(a), (b) (West 2010). Whether a defendant acted intentionally or knowingly is rarely proven by direct evidence and may be inferred from the circumstances surrounding the incident. *People v. Maggette*, 195 Ill. 2d 336, 354 (2001); *People v. Castillo*, 2018 IL App (1st) 153147, ¶ 26.

¶ 36 Here, viewing the evidence in the light most favorable to the State, a rational trier of fact could find, beyond a reasonable doubt, that defendant committed intentional and knowing acts of sexual penetration when he “humped” between the thighs of a naked child, causing his penis to

touch her vagina on two different occasions. The evidence shows defendant “humped” M.L. in this manner on over 30 different occasions, in addition to a variety of other sexual acts, when she was between the ages of 9 and 12. Twice when he did this, defendant’s penis touched M.L.’s vagina. The second time it happened, M.L. testified he was laying on top of her “humping” her with his penis when both were naked, and she felt his penis touch her vagina, “deeper into [her] lips” than the first time and hurting her. Any rational trier of fact could find that an adult man who deliberately inserts his penis between the legs of a child and “humps” her mere inches from her vagina while both are naked intends and knows that his penis will come into some sort of contact, however slight, with the child’s vagina.

¶ 37 Nevertheless, defendant argues M.L.’s testimony fails to establish that defendant intentionally and knowingly touched her vagina with his penis. He points to the fact that, initially, contrary to her trial testimony, M.L. told the officer at the police station that defendant placed his penis close to her vagina, but never inserted it. He also asserts that M.L. described the first incident of penetration as defendant’s penis “ended up” touching her vagina.

¶ 38 However, the trial court found M.L.’s testimony was not impeached by her earlier statement to police, finding her explanation “reasonable” that she was uncomfortable revealing to her mother everything that happened. It found M.L. to be a credible witness and her testimony was corroborated by Dr. Lorand, who found a transection on M.L.’s hymen consistent with M.L.’s outcry regarding her chronic sexual abuse. Dr. Lorand testified that the only instances where she had seen accidental trauma to a hymen involved “straddle injuries” where the child fell onto an object sticking straight into the air. In its ruling, the trial court emphasized there was no testimony or outcry regarding any straddle injury which could have caused the injury. Given

Dr. Lorand's testimony that the injured area of M.L.'s hymen tears easily "with pressure," and M.L.'s testimony that the second time defendant's penis touched her vagina "it hurt," the evidence supports a finding that defendant's inserting his penis between M.L.'s vaginal lips was not inadvertent. We will not substitute our judgment for that of the trial court concerning its findings regarding witnesses' credibility and the reasonable inferences to be drawn from the facts. See *Brown*, 2013 IL 114196, ¶ 48.

¶ 39 Taking the evidence in a light most favorable to the State, we find a rational trier of fact could have found defendant guilty of predatory criminal sexual assault of a child. Under the circumstances, defendant's conviction is not so unreasonable or improbable as to create a reasonable doubt of his guilt. Accordingly, we affirm the trial court's judgment.

¶ 40 Affirmed.