2012 IL App (1st) 102509-U

SECOND DIVISION
May 22, 2012

No. 1-10-2509

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 09 CR 21552
	)	
CARL HARRIS,	)	Honorable
	)	James B. Linn,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE QUINN delivered the judgment of the court.
Justices Cunningham and Connors concurred in the judgment.

O R D E R

¶ 1 *Held:* Judgment entered on defendant's conviction of aggravated criminal sexual assault affirmed over his challenge to the sufficiency of the evidence.

¶ 2 Following a jury trial, defendant Carl Harris was found guilty of criminal sexual assault and aggravated criminal sexual assault, then sentenced to 14 years' imprisonment on the latter conviction. On appeal, defendant contends that he was not proved guilty of aggravated criminal sexual assault beyond a reasonable doubt because the victim lacked credibility and certain details of her testimony were controverted by other witnesses.

¶ 3 The record shows, in relevant part, that defendant was charged with three counts of aggravated criminal sexual assault, criminal sexual assault, and unlawful restraint in connection

with the physical and sexual attack of 18-year-old J.S. on March 30, 2009. The attack occurred when J.S. attempted to recover her lost ID from defendant's residence at 639 West 66th Street, in Chicago.

¶ 4 At trial, J.S. testified that on March 30, 2009, she was 18 years old, did not have a phone, and was living with her aunt who set an 11 p.m. curfew at which time she would lock the door, leaving J.S. unable to enter the house. On that date, J.S. had been living in the area for about three weeks, and met defendant for the first time about a week and a half before at a gas station near 66th and Halsted Streets where he was "[p]robably selling weed." She then saw him around the neighborhood four or five times, spoke with him on a few occasions, and bought marijuana from him one time at his house while accompanied by a friend. However, she never dated, kissed, or slept with him.

¶ 5 On one of their speaking occasions, defendant told J.S. that he had her ID, and when she asked where it was, defendant responded that it was at his house. She then ran into him another time and asked again about her ID, and this time defendant told her that she "would have to come and get it 'cause he's not going to walk around with it in his pocket."

¶ 6 About 10:30 p.m. the next day, March 30, 2009, J.S. arrived unannounced at defendant's residence to get her ID, knocked on the door, and entered when defendant said "come in." Inside, defendant was sitting on the bed and speaking with an unknown individual whom J.S. referred to as "the movie man" because he was selling movies. She stood by the door and waited for them to finish their discussion. J.S. described the residence as "like a shack," with an inflatable bed to the right of the entry door, a large screen television, and a bathroom, and noted that it was small enough that "[y]ou can touch everything in the room from standing anywhere."

¶ 7 When the movie man left about 10 minutes later, J.S. asked defendant for her ID three or four times, but defendant procrastinated and said "stuff like just stay over here for a minute. Just sit down or hold on for a minute. I'm fittin to get it." This made J.S. angry because the time was

approaching 10:45 p.m., and she worried that her aunt would lock the door and leave her with no way to get into the house. She told defendant that "he was being very stupid," and, at that point, defendant became angry, raised his voice, and said that "I should never say that because those were the last words his mom said to him before she died and I just made the biggest mistake of my life."

¶ 8 J.S. finally told defendant, "[F]orget it, I'm going to leave," and when she turned the door knob to go, defendant pushed her shoulder and caused her to fall onto the bed. She did not take the push "too serious" and told defendant again that she was going to leave, but he responded, "[E]very time you touch the door I'm going to knock you out." Not knowing how serious the situation was, she touched the door, and defendant punched her on the left side of her jaw with a closed fist. J.S. began to cry and stood in front of the door because she did not want to be on the bed with defendant, and she did not leave because of his threats to hit her.

¶ 9 Defendant subsequently retrieved a gun from his television stand, took the bullets out, pointed it at J.S.'s face, and pulled the trigger about five or six times. This caused her to scream, and defendant showed her the gun "like see, there ain't nothing in there," then asked why she was screaming and told her, "[C]an't nobody hear you anyway." He reloaded his gun, and told J.S. to undress and lay on the bed, and she complied out of fear of the gun and the fact that he had already hit her. He then lay on top of J.S. while still holding the gun, and told her that he did not want to have sex with her, but wanted "to put my penis inside of you and go to sleep." When defendant tried to kiss her neck, she moved her head back and forth because she "didn't want him on me;" and, as she tried to get away, he bit her on the back and shoulder. He then undressed, put his penis inside her vagina for about five to six minutes, and ejaculated inside of her. As this was happening, J.S. told him, "I hope you know this is rape because I'm crying and I'm telling you no right now."

¶ 10 Afterwards, defendant fell asleep, and J.S. began "trying to put together a plan in my head what I was going to do next." Thinking that she could not put on her clothes without waking defendant, she "went for" the door, but defendant woke up, "busted" her lip, bit her, and strong-armed her. He then told her that she could not leave and had sex with her again. Ultimately, defendant put his penis inside her vagina three times that night without her consent, struck her on her face, arm, and lip, and left bite marks on her back.

¶ 11 When J.S. woke the next morning, defendant instructed her not to tell anyone what had happened, and she agreed in order to get away. He eventually let her go, and she walked to her friend Deandre's house and told him what happened, then went to her aunt's house and told her what happened. Her aunt called police, and when an ambulance arrived, J.S told the paramedics what happened and was taken to St. Bernard Hospital where she described the events to a nurse and doctor. A rape kit was administered and she was given the morning-after pill, all of which made her feel "embarrassed and sad." On April 1, 2009, J.S. identified defendant from a photo array, and on April 3, 2009, she moved to Minnesota because she wanted a fresh start and was afraid to stay here.

¶ 12 On cross-examination, J.S. denied telling hospital staff that she was on birth control and that she last had consensual sex on March 26. She also denied not being given the morning-after pill because she was on birth control. J.S. further stated that she did not give police Deandre's information because he did not want to be involved, and, on redirect, she explained that he did not want to get involved with police because of his gang affiliation. She also testified that Deandre went looking for defendant himself because they are fellow gang members.

¶ 13 Rachelle Alejandro testified that she is a nurse at St. Bernard Hospital. She interviewed J.S. about 2 p.m. on March 31, 2009, and J.S. told her that she had met with "this guy" about 10:30 p.m. who punched her in the face, head, and torso, and forced her to have sex with him three times, at least once at gunpoint. Nurse Alejandro observed fresh bruising on J.S.'s left

cheek, the back of her neck, and on the left forearm, and she administered a sexual assault evidence collection kit. She was also shown a series of photographs and identified one which showed bruising on the back of J.S.'s neck/upper back. Nurse Alejandro testified that J.S. told her she last had consensual sex on March 26, 2009.

¶ 14 On cross-examination, Nurse Alejandro stated that she did not notice any bite marks or teeth impressions on J.S., and noted that J.S. never told her that she had been bitten. She also stated that J.S. was not given the morning-after pill because she was on birth control.

¶ 15 The parties stipulated that the vaginal swabs taken of J.S. contained her DNA profile and that of a male. Jennifer Belna, a forensic scientist with the Illinois State Police, testified that she compared defendant's DNA profile to the male DNA profile found on the vaginal swabs, and opined that the profiles matched. She also testified that defendant's DNA profile would be expected to occur in approximately 1 in 1.5 quadrillion black, 1 in 43 quadrillion white, or 1 in 39 quadrillion Hispanic unrelated individuals, numbers which are greater than the entire population on earth.

¶ 16 Chicago police detective William Proctor testified that about 2 p.m. on March 31, 2009, he was assigned J.S.'s case and went to St. Bernard hospital to interview her. He spoke with J.S., her doctor, her aunt, and her mother, then went to a coach house at 639 West 66th Street to investigate the scene of the assault and locate defendant. He knocked on defendant's door and received no answer, and when he returned the next day, he was still unable to gain entry. At that point, Detective Proctor put out an investigative alert for defendant and compiled a photographic lineup from which J.S. identified defendant.

¶ 17 On cross-examination, Detective Proctor stated that J.S. told him that defendant called her on the phone and told her to get her ID from his house. She also told him that she knew the movie man. On redirect, Detective Proctor testified that J.S. told him defendant bit her.

¶ 18 For the defense, James Voves testified that on March 31, 2009, he was an emergency medical technician for the Chicago Fire Department. That day, about 11:58 a.m., he responded to a call at 6647 South Halsted Street and picked J.S. up from the curb in front of a payphone. J.S. told him what had happened and stated that she had been smoking pot. While Voves acknowledged that his report stated she had been smoking pot as late as 9 a.m. that morning, and that he observed no obvious signs of trauma, Voves testified that he does not remember this case.

¶ 19 On cross-examination, Voves was asked whether it was possible J.S. could have said she last smoked at 9 p.m., and replied "anything is possible." He also stated that J.S. told him she had been raped, beaten, and bitten all night long, and that he has seen patients without obvious signs of injury develop bruising and swelling hours later.

¶ 20 Julian Brandy, aka "Boo" or "the movie man," testified that he sells movies in the neighborhood. He has known defendant for about one year and would "usually" go to defendant's residence at 66th Street and Lowe Avenue, knock on his door, and ask if he would like to buy any movies. Brandy testified that he was familiar with J.S. because he saw her walking down Halsted Street "pretty often," and that he last saw her inside defendant's house, but could not remember the date or time.

¶ 21 On that particular date, Brandy knocked on defendant's window, and when defendant asked who was there, Brandy responded, "the movie man." J.S. answered the door, and Brandy entered the house which smelled as if they were smoking marijuana. He stood near the door, and J.S. sat on the bed by defendant without ever saying anything. Brandy remained in defendant's house for between five and seven minutes during which time J.S. never tried to leave and never asked him for help, and he did not see a gun near the television set. On cross-examination, Brandy stated that he has a 2004 narcotics conviction, and that he did not actually see anybody smoking. On redirect, Brandy testified that both defendant and J.S. seemed "cheerful" when he saw them.

¶ 22 Defendant testified that he is 30 years of age, and that he has a 2004 conviction for possession of a controlled substance, and a 2001 conviction for delivery of cannabis. On March 30, 2009, he was living at 639 West 66th Street and had known J.S. for about four months, having first met her in a restaurant near his aunt's house. They had a "platonic relationship where we both would see other people, but we would see each other on and off," and that relationship was also sexual in nature. Defendant and J.S. would get together twice every two weeks at his house, and "[n]ine times out of ten we are going to end up smoking weed or just about have sex every time." Defendant testified that although he sells "weed," he never sold any to J.S. and, instead, gave it to her in small amounts.

¶ 23 About 10:30 p.m. on the date in question, J.S. showed up unannounced at defendant's house, and after he let her in, she sat down on his bed and smoked cannabis with him. Shortly thereafter, the movie man came over, and when he left about 10 minutes later, they smoked more "weed" and played one of the movies defendant had purchased. They had sex "after the last blunt was gone." J.S. never said "no," defendant never threatened or hit her, and they only had sex once that night.

¶ 24 At some point, J.S. asked defendant if he could get her a quarter-pound of marijuana, but defendant only had two ounces. He "made a few calls" and tried to fulfill her request, and defendant's cousin gave him the number of someone named "Billy" who said he could bring the marijuana to him "first thing in the morning." Defendant told J.S. the plan, and she decided to stay the night and wait for the morning delivery.

¶ 25 The next morning, defendant received a call from Billy that someone would have to pick up the marijuana because he had a flat tire, and J.S. left to do so. Defendant did not hear from her or Billy again that day, and he also did not know that police were subsequently looking for him. About two or three days later, he went to Burlington, Iowa with his "baby mother" because she was about to deliver his child and needed help. He then returned to Chicago, and was

stopped by police in November 2009, and taken in for questioning. Defendant denied telling police he had gone to Wisconsin, and maintained that he told them he went to Iowa.

¶ 26 Defendant was shown the photograph of J.S.'s upper back and identified "purple marks" on her skin. When defendant was asked whether he sucked on J.S.'s skin during intercourse on the night in question, he responded that he was "kind of high, so I couldn't be accurate to say I sucked on her skin, but it's a possibility." He also testified that he never threatened J.S. with a handgun or forced himself on her sexually, and that she is accusing him of doing so because "she believes I set her up" in order "[t]o get her money stolen."

¶ 27 On cross-examination, defendant stated that J.S. came to his house six times total, that they had consensual sex five out of those six times, and that a spare key to his house went missing when J.S. was there one evening. He also stated that he returned to Chicago in October.

¶ 28 In rebuttal, Chicago police detective Dwayne Davis testified that on November 9, 2009, he was assigned to this case and learned that defendant was in custody. When he interviewed him the next day, defendant told him that he and J.S. were friends, that they had engaged in sexual intercourse six times at his house, and that he had given her a key to his house. He also said that the morning after the incident in question, he told J.S. that he was moving to Wisconsin to be with his baby and the mother, and that he subsequently learned that the baby's mother was driving to Chicago to bring him back with her.

¶ 29 The State also entered into evidence certified copies of Brandy's 2004 conviction for possession of a controlled substance, and defendant's 2001 conviction for manufacture and delivery of cannabis and 2004 conviction for possession of a controlled substance. The jury then found defendant guilty of criminal sexual assault and aggravated criminal sexual assault, and the court sentenced him to 14 years' imprisonment on the latter conviction.

¶ 30 In this appeal from that judgment, defendant contends that he was not proved guilty of aggravated criminal sexual assault beyond a reasonable doubt. He claims that "J.S.'s account of

forced sex was unconvincing, completely denied by [defendant] and controverted, in part, by three non-interested third-party witnesses."

¶ 31 The State responds that J.S.'s credible testimony and physical injuries, as well as defendant's immediate flight from Illinois for more than seven months following the incident, are sufficient to uphold defendant's conviction. The State also responds, essentially, that this court should not interfere with the jury's credibility determinations and findings which were based on their personal observations of the witnesses and the abundant evidence of defendant's guilt presented at trial.

¶ 32 Where, as here, defendant challenges the sufficiency of the evidence to sustain his conviction, the question for the reviewing court is 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. *People v. Campbell*, 146 Ill. 2d 363, 374 (1992). It is the responsibility of the trier of fact to determine the credibility of the witnesses and the weight to be given their testimony, to resolve any inconsistencies and conflicts in the evidence, and to draw reasonable inferences therefrom. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). A reviewing court will not overturn the decision of the trier of fact unless the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of defendant’s guilt. *Campbell*, 146 Ill. 2d at 375.

¶ 33 To sustain defendant's convictions of aggravated criminal sexual assault, the State was required to prove that defendant caused bodily harm to the victim during the commission of a criminal sexual assault. 720 ILCS 5/12-14(a)(2) (West 2008). A criminal sexual assault occurs where defendant commits an act of sexual penetration by the use of force or threat of force. 720 ILCS 5/12-13(a)(1) (West 2008).

¶ 34 Viewed in the light most favorable to the prosecution, the record shows that on March 30, 2009, J.S. went to defendant's house at 639 West 66th Street to pick up her ID, and eventually

became fed up with his dilatory tactics and told him that "he was being very stupid," causing defendant to lose his temper. When she tried to leave, defendant pushed her onto the bed and threatened to knock her out if she touched the door, and as she tried again, he punched her on the left side of her jaw with a closed fist, picked up a gun, emptied the bullets, and began squeezing the trigger while pointing it at her face. He then reloaded the gun, and ordered J.S. to undress and lay on the bed where, with gun in hand, he got on top of her and put his penis inside her vagina without consent. He then had sex with her twice more before finally letting her go the next morning. During the attack, J.S. sustained bruising to her left cheek, the back of her neck, and her left forearm. This evidence was sufficient to allow the trier of fact to find the essential elements of aggravated criminal sexual assault proved beyond a reasonable doubt. 720 ILCS 5/12-14(a)(2) (West 2008).

¶ 35 Defendant claims, however, that J.S. was not a credible witness and cites various "[i]nconsistencies" in her testimony. He asserts that "[w]ith her curfew looming minutes away and the uninviting prospect of being locked out of her aunt's house on an early spring night, it is incredible that J.S. did not ask [defendant] about her identification as soon as she arrived at [his] house," rather than waiting for Brandy to leave first. Defendant also asserts that it is "inconceivable" that J.S. "made no effort to flee the scene when [he] fell asleep," and notes that "J.S. did not do the most likely thing and run home to her worried aunt and report the sexual assault" when she left his house, but rather, went to Deandre's house instead.

¶ 36 We note that it is not the function of this court to retry defendant on appeal (*People v. Toy*, 407 Ill. App. 3d 272, 286 (2011); rather, our task is to carefully examine the evidence while giving due consideration to the fact that the court and jury saw and heard the witnesses (*People v. Smith*, 185 Ill. 2d 532, 541 (1999)). Here, defendant is essentially asking us to assume the role of fact-finder on review and conclude that the actions of J.S. were "incredible" and "inconceivable." We decline to do so. In finding defendant guilty of aggravated criminal sexual assault, the jury

clearly found J.S. to be a credible witness, as it was entitled to do (*Sutherland*, 223 Ill. 2d at 242), and, on this record, we find nothing unreasonable about that determination to justify a reasonable doubt of his guilt (*Campbell*, 146 Ill. 2d at 375).

¶ 37 Defendant also claims that there was a lack of evidence to corroborate J.S.'s account of forced sex, and that "[i]n contrast to the unconvincing account presented by J.S., [he] told an internally consistent version of the night's events, that was not contradicted by any other evidence adduced by the prosecution." In arguing a lack of corroborative evidence, defendant cites the testimony of Voves who saw "no obvious signs of trauma," and that of Nurse Alejandro who corroborated "some of J.S.'s superficial injuries, such as to her cheek and forearm," but not "the injuries most likely to have been sustained from a sexual assault, that is, the bite marks J.S. purportedly received."

¶ 38 With respect to defendant's claim that there was a lack of corroborative evidence of forced sex, we note that defendant cites a lack of bite marks and other injuries to corroborate J.S.'s testimony, but, as the State points out, he has failed to make the photographs of those injuries part of the record, thereby depriving this court of an opportunity to observe them first-hand. In reply, defendant asserts that the State should supplement the record itself and characterizes its point as "particularly unseemly."

¶ 39 As the State correctly observes, it is defendant's burden to present a sufficiently complete record in support of his claims of error, and any doubts that arise from the incompleteness of the record will be resolved against him. *People v. Lopez*, 229 Ill. 2d 322, 344 (2008). Here, defendant claims that there were no bite marks on J.S. to corroborate that she was bitten, omits the photographs showing her injuries, and claims that the descriptions of her injuries given by witnesses at trial should suffice. However, J.S. testified that defendant bit her and left bite marks on her back, and the jury found him guilty of aggravated criminal sexual assault after hearing the testimony of the witnesses and being given an opportunity to view the photographs of her

injuries. Defendant failed to make the photographs of J.S.'s injuries part of the record, and any doubts arising from the incompleteness of the record will be resolved against him. *Lopez*, 229 Ill. 2d at 344.

¶ 40 This oversight notwithstanding, we observe that the positive and credible testimony of a single witness is sufficient to convict defendant. *Smith*, 185 Ill. 2d at 541. In the case at bar, J.S. positively identified defendant as her attacker, and she provided consistent testimony regarding the attack relative to the elements of the offense. *People v. Berland*, 74 Ill. 2d 286, 306 (1978).

¶ 41 Although defendant now champions his own "internally consistent version of the night's events," we note that reversal is not warranted merely because defendant alleges that J.S. was not credible. *People v. Evans*, 209 Ill. 2d 194, 211-12 (2004). The jury was not required to accept defendant's version of events over the victim's testimony, and, in fact, was free to accept parts of both the State's and defendant's respective cases in reaching its conclusion. *People v. Reed*, 80 Ill. App. 3d 771, 780-81 (1980). The jury found her to be a credible witness, and we will not speculate as to why J.S. contacted Deandre first, or why she notified him before her aunt. Neither raises a reasonable doubt of defendant's guilt, and we therefore reject his claim, and affirm his conviction of aggravated criminal sexual assault.

¶ 42 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 43 Affirmed.