

No. 1-12-3387

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 20601
	)	
ELBERT GASTON,	)	Honorable
	)	Stanley Sacks,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LIU delivered the judgment of the court.  
Justices Simon and Pierce concurred in the judgment.

**ORDER**

¶ 1 *Held:* The evidence, viewed in the light most favorable to the State, was sufficient to sustain defendant's conviction for attempted aggravated criminal sexual assault.

¶ 2 Following a bench trial, defendant Elbert Gaston was convicted of attempted aggravated criminal sexual assault and sentenced as a Class X offender to 15 years' imprisonment. On appeal, defendant contends that he was not proved guilty beyond a reasonable doubt where the only inculpatory evidence of the crime came from the alleged victim's own prior statements,

which she later retracted in an affidavit and on the stand, and where her original statement to police was uncorroborated. We affirm.

¶ 3 Defendant was charged, in pertinent part, with attempted aggravated criminal sexual assault of R.C. stemming from an incident that occurred during the late evening hours of September 30, 2011, into the early morning hours of October 1, 2011. On November 25, 2011, R.C. provided Detective Timothy Earls and Assistant State's Attorney (ASA) Holly Kremin with a written statement that all three signed.

¶ 4 According to the statement, R.C. broke up with defendant because he beat her with a crowbar in November of 2010. On September 30, 2011, defendant called R.C. 300 times, came over to her apartment, "kicked the door in," and begged her to leave with him. R.C. refused and called the police, but defendant left before they arrived. Later that same evening, R.C. agreed to meet defendant at a gas station because he said he had clothes for their children. At the gas station, defendant dragged her by her hair and forced her into his vehicle. Defendant stated that because R.C. must be having sex with her new boyfriend, she was going to have sex with him. Defendant ripped R.C.'s shirt off and tried to unbutton her pants. R.C. believed defendant was going to rape her so she kicked him and he stumbled out of the car. R.C. attempted to escape, but defendant grabbed her, started punching her in the face and stomping on her head with his feet, and threatened to "put a bullet in her head." The beating continued until a gas station security guard approached them and told defendant to stop. Defendant responded that it was none of his business, the security guard walked away, and defendant continued to beat R.C. Several minutes later, police arrived and defendant fled. As a result of the incident, R.C. was naked from the waist up when police arrived, and had bruises on her face, head, and body. R.C. indicated that she was not under the influence of drugs or alcohol.

¶ 5 On December 15, 2011, R.C. submitted an affidavit to the State essentially recanting her prior statement. In particular, R.C. attested that the events which unfolded on October 1, 2011, were the result of an argument between her and defendant that went too far. She stated that they were both drunk at the time of the incident, and that defendant never attempted to sexually assault her on October 1, 2011, or any other day they were together.

¶ 6 Prior to trial, the State made a motion to admit proof of other crimes, arguing that defendant's prior confrontations with R.C. were relevant to establish his state of mind, motive, intent, and propensity to commit acts of domestic violence. As relevant to this appeal, the trial court allowed evidence to be presented at trial regarding confrontations between defendant and R.C. on November 18, 2010, and September 30, 2011, an incident that occurred only hours before the incident at issue.

¶ 7 At trial, R.C. testified that she has known defendant since 1999, he is the biological father to three of her four children, and she and defendant were working on repairing their relationship at the time of trial. She visited defendant nearly every week since he has been in prison. On November 18, 2010, R.C. told police that defendant hit her with a tire iron, and he subsequently pleaded guilty to domestic battery based on the incident. R.C. indicated, however, that she lied about defendant hitting her with a tire iron because she was mad at him for lying and cheating on her. On September 30, 2011, R.C. stated that she called the police and made a false report that defendant kicked in her door because he refused to have sexual intercourse with her.

¶ 8 R.C. further testified regarding the incident in question, which occurred during the late evening hours of September 30, 2011, into the early morning hours of October 1, 2011. At that time, defendant had agreed to have sex with R.C., and they met each other at a gas station near 63rd and State Streets in Chicago. R.C. was intoxicated before she arrived at the gas station.

She willingly got into defendant's vehicle and they started drinking alcohol. After about an hour, the two were about to have sex in the car when defendant received a phone call from another woman. Defendant indicated he was ready to leave, and R.C. became angry and stabbed him in the face and arm with a knife. The two then started fighting and they got out of the car. Defendant punched R.C. in the face and they continued fighting until the police arrived, at which point defendant left the scene. When the police approached R.C., she did not have her shirt on because she voluntarily took it off in the car when she was with defendant. The bruises and injuries R.C. sustained on her face and body were due to the altercation she had with defendant. After the police left the scene, R.C. drove away in defendant's vehicle and set it on fire.

¶ 9 R.C. acknowledged that she told the responding officer a different story regarding what happened on the night in question. In particular, R.C. told the responding officer that defendant shoved her into the passenger seat of his vehicle, threatened to kill her, and stated that he was going to have sex with her. However, she denied later telling Detective Earls that defendant forced her into his vehicle, and that she refused his sexual advances culminating in defendant hitting her in the face and body. R.C. further indicated that she complied with the ASA's request to sign documents, but she never read them.

¶ 10 Officer Todd Partyka testified that he was on routine patrol with Officer Bochenek around 1 a.m. on October 1, 2011, when he received a call that a battery was in progress at a gas station near 63rd Street and Yale Avenue. As he approached the gas station in his squad car he observed two individuals, one of whom was on the ground and the other, who was wearing a white shirt, standing above the individual on the ground and making a stomping motion. When he exited his squad car, Partyka saw the individual who was wearing the white shirt, run past

him. At this time, Partyka identified the individual as a male, and he and Bochenek pursued him, but did not detain him.

¶ 11 Officer Bochenek testified similarly to Officer Partyka. She also testified that she observed a woman, later identified as R.C., who was naked from the waist up, bent over on the ground, and an African American man holding her from behind and beating her in the head. Both Bochenek and Partyka chased the man who was beating R.C., and, when they failed to catch him, Bochenek returned to the gas station and interviewed R.C. During the interview, R.C. stated that her ex-boyfriend, defendant, caused her injuries. Bochenek did not smell alcohol on R.C. and she did not appear drunk.

¶ 12 ASA Kremin testified that on November 25, 2011, she and Detective Earls met with R.C. and took her written statement regarding the events of October 1. R.C.'s statement, which Kremin read aloud, was published at trial.

¶ 13 Detective Timothy Earls testified similarly to ASA Kremin. He also testified that he spoke to R.C. before Kremin took her statement, and that R.C.'s statement to him regarding the incident was consistent with her subsequent written statement, for which he was also present.

¶ 14 Thomas Rudolph testified for the defense that he was working at the gas station in question on the evening of September 30, 2011. According to Rudolph, he first became aware of the incident after police arrived at the gas station, never saw a man and a woman outside of the station, and did not tell a man to leave a woman alone. On cross-examination, Rudolph testified that he knew defendant by his nickname "Fudge."

¶ 15 Following closing arguments, the trial court found defendant guilty of attempted aggravated criminal sexual assault. In doing so, the court acknowledged that R.C. was a reluctant witness who wanted to forgive defendant for his actions. The court found that R.C.'s

affidavit "mean[t] nothing whatsoever," and was simply an attempt by R.C. to help defendant and work out their troubled relationship. The court further found that the credible evidence it heard in this case came not from R.C., but from the witnesses who arrived at the scene, saw the events unfold, and heard what R.C. said.

¶ 16 On appeal, defendant contends that the State failed to prove him guilty beyond a reasonable doubt of the aggravated criminal sexual assault of R.C. where the evidence of that crime came exclusively from R.C.'s prior statement, which she disavowed in an affidavit and on the stand, and where her original statement to police was uncorroborated. Defendant further asserts that R.C.'s affidavit and trial testimony were more plausible than her written statement.

¶ 17 When reviewing the sufficiency of the evidence, the relevant inquiry 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. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979); *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25, 228 (2009). The credibility of the witnesses, the weight to be given their testimony, and the resolution of any conflicts in the evidence are within the province of the trier of fact, and a reviewing court will not substitute its judgment for that of the trier of fact on these matters. *People v. Brooks*, 187 Ill. 2d 91, 132 (1999). Reversal is justified only where the evidence is "so unsatisfactory, improbable or implausible" that it raises a reasonable doubt as to the defendant's guilt. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). These standards apply even where a defendant has been convicted on the basis of a recanted prior inconsistent statement. *People v. Zizzo*, 301 Ill. App. 3d 481, 489 (1998).

¶ 18 In the instant case, we find that the evidence was sufficient to convict defendant of attempted aggravated criminal sexual assault. R.C.'s written statement, witnessed by ASA

Kremin and Detective Earls, provided that she met defendant at a gas station where he forced her into his vehicle. Defendant stated that R.C. was going to have sex with him, ripped her shirt off, and attempted to unbutton her pants. R.C. kicked defendant out of his vehicle, and when they were both outside, defendant started punching her in the face, stomping on her head with his feet, and threatened to shoot her. Several minutes later, police arrived and defendant fled. R.C. stated that she was not intoxicated at the time of the incident. Although R.C. recanted much of her written statement, she corroborated portions of her original statement at trial. R.C. specifically testified that when she and defendant were outside of the car, defendant punched her in the face and they continued fighting until the police arrived. R.C. admitted that her injuries were due to the altercation she had with defendant. Moreover, R.C. acknowledged that she told the responding officer that defendant forced her into the passenger seat of his vehicle, threatened to kill her, and stated that he was going to have sex with her. In addition, Officers Partyka and Bochenek saw R.C. being beaten at the gas station, and Bochenek testified that R.C. did not appear intoxicated and R.C. indicated she was beaten by defendant. Detective Earls testified that R.C.'s oral statements to him reflected her subsequent written statement.

¶ 19 The trial court clearly found R.C.'s original statement to police credible. It indicated that the credible testimony at trial was not from R.C., but from the witnesses who arrived at the scene, saw the events unfold, and heard what R.C. said regarding the incident. The court further found that R.C. was not a credible witness at trial because she wanted to forgive defendant and work on their relationship, and her affidavit meant "nothing whatsoever." We will not substitute our judgment for the trial court's on such a credibility determination. See *Brooks*, 187 Ill. 2d at 132. R.C.'s original statement, especially when combined with the testimony of the police officers, was sufficient to sustain defendant's conviction for attempted aggravated criminal

sexual assault. Viewing the evidence in the light most favorable to the prosecution, we conclude that a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Defendant's self-serving declaration that R.C.'s recantation is "a more plausible story" than her original written statement does not constitute such a showing and is insufficient to upset the trial court's determination.

¶ 20 Nevertheless, defendant largely relies on two cases to support his contention that his conviction cannot be sustained by a disavowed witness statement and the lack of corroborative evidence. Specifically, defendant relies on *People v. Brown*, 303 Ill. App. 3d 949, 965-66 (1999), where this court reversed the defendant's conviction, finding that there was no evidence to support his guilt other than a single witness's recanted statement; and *People v. Parker*, 234 Ill. App. 3d 273, 280 (1992), where the defendant's convictions were reversed because the only evidence that incriminated him was the prior statements of three eyewitnesses that were recanted at trial. This court in *Parker* further found that the "lack of credible eyewitness testimony in favor of the State, combined with the complete absence of any physical evidence tying defendant to the crime," prompted us to find that the evidence was insufficient to sustain his convictions. *Parker*, 234 Ill. App. 3d at 280. However, both of these cases were decided under their particular facts and circumstances, and do not establish, as a matter of law, that a recanted prior inconsistent statement cannot support a conviction. See *Zizzo*, 301 Ill. App. 3d at 488-89. In addition, our rationale in *Brown* and *Parker* is not applicable to the instant case because, here, the testimony from the police officers was sufficient to corroborate R.C.'s recanted prior statement. See *People v. Daheya*, 2013 IL App (1st) 122333, ¶¶ 73-74 (distinguishing *Brown*



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and *Palmer* on similar grounds).

¶ 21 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 22 Affirmed.