2015 IL App (1st) 131305-U

THIRD DIVISION
June 10, 2015

No. 1-13-1305

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 22579
	)	
MARIA FLORES,	)	The Honorable
	)	Kenneth J. Wadas
Defendant-Appellant.	)	Judge Presiding.

JUSTICE LAVIN delivered the judgment of the court.
Presiding Justice Pucinski and Justice Mason concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient to sustain defendant's conviction for aggravated criminal sexual abuse because defendant's intent to arouse could be inferred solely from the nature of her acts. In addition, the trial court did not abuse its discretion by allowing a police officer to testify to a prior consistent statement made by the victim after defense counsel opened the door to the line of questioning. Finally, the trial court's determination that the victim suffered severe bodily injury was not against the manifest weight of the evidence. We affirm.

¶ 2 Following a bench trial, defendant Maria Flores was found guilty of two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2008)), two counts of aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 2008)), and aggravated criminal sexual abuse (720 ILCS 5/12-16(a)(2) (West 2008)). Defendant was sentenced to three consecutive terms of 20, 10 and 7 years in prison. On appeal, defendant contends that the State failed to prove the offense of aggravated criminal sexual abuse beyond a reasonable doubt because there was no evidence defendant pulled on the victim's vagina for her own sexual gratification. Defendant also contends that the trial court erred by allowing a police officer to testify to a prior consistent statement made by the victim. In addition, defendant contends that the trial court erred in imposing consecutive sentences because there was no evidence of severe bodily injury, and thus, defendant's conviction for aggravated battery of a child was not a triggering offense under section 5-8-4(d)(1) (730 ILCS 5/5-8-4(d)(1) (West 2008)). We affirm.

¶ 3 I. BACKGROUND

¶ 4 We recite only those facts necessary to understand the issues raised on appeal. In November 2009, B.B., defendant's 12-year-old daughter, reported being abused by defendant to her teacher who alerted the authorities. Defendant was then charged with two counts of predatory criminal sexual assault of a child under the age of thirteen for digitally penetrating B.B., two counts of aggravated battery of a child under the age of thirteen causing great bodily harm and permanent disfigurement, and aggravated criminal sexual abuse. Prior to trial, the State moved to introduce hearsay statements B.B. made to her teacher Antonia Nevarez, Assistant State's Attorney (ASA) Krystyn Dilillo, Chicago Police Department (CPD) Detective Nari Isakson and CPD Detective Jose Diaz. Following a hearing, the trial court concluded that the statements were admissible pursuant to an exception to the hearsay rule, but excluded

Detective Isakson from testifying about any statements B.B. made in Spanish to Detective Diaz. The trial court, however, did not determine whether Detective Diaz could testify to the statements as the State did not present him as a witness at the hearing.

¶ 5 At trial, then 15-year-old B.B. testified that in November 2009 she resided with defendant, defendant's husband and her four younger siblings. B.B was solely responsible for cleaning the home and defendant punished B.B. if defendant was unsatisfied with B.B.'s housekeeping. Defendant routinely hit B.B. with defendant's hand and the TV cable on the front and back of her body. Defendant also hit B.B. with a "foot length" wooden stick on the side of her eye and head, leaving a bump. On one occasion, defendant hit B.B. with a boot on the head, leaving a bloody wound. In addition, defendant bit B.B.'s breasts and back, leaving bruises and permanent marks. Defendant occasionally put her fingers inside B.B.'s vagina and it felt like "something was scraping [her] on the inside." Furthermore, B.B. hid in the closet at night to complete her homework assignments because defendant refused to let her do school work.

¶ 6 On cross-examination, after being repeatedly asked by defense counsel, B.B. did not recall telling the emergency room doctor, Nevarez or Detective Isakson whether defendant vaginally penetrated her, but recalled telling them that defendant bit her and "pulled down on [her] private parts." B.B. believed that defendant punished her for not completing chores and routinely cried since giving birth to B.B.'s younger half brother. B.B. spoke to the ASA about her testimony a week before trial. She also spoke to the ASA, Detective Diaz and Detective Isakson about her testimony the day of trial. On redirect examination, she further testified that defendant's fingers were "sometimes . . . outside or inside" her vagina.

¶ 7 Detective Diaz testified that he received a call from the child abuse hotline and proceeded to the hospital with his partner Detective Isakson to interview B.B. Thereafter, he placed

defendant under arrest and primarily interviewed her in Spanish at the police station, translating for Detective Isakson and ASA DeLillo. Defendant waived her *Miranda* rights, and after looking at photographs of B.B.'s injuries, confessed to the abuse. She admitted biting B.B's breasts, nipples, stomach and back. Defendant also kept B.B. home from school and made her clean the house and dishes stripped naked. If she made a mistake, defendant would take B.B. into the bathroom, bite her, and pull on her vagina. She also beat B.B. with a wooden stick she found on the front lawn. Defendant believed she did this out of desperation, depression and anxiety, especially during her pregnancy.

¶ 8 The following day, Detective Diaz interviewed B.B. at the police station in both English and Spanish in the presence of Detective Isakson and ASA DeLillo. Detective Isakson showed B.B. a photograph of a vagina and B.B. demonstrated the force by which defendant pulled on her. B.B. also said "she felt [defendant's] finger nails inside of her vagina." Although Detective Diaz works primarily on abuse cases and sends special victim's cases to the Children's Advocacy Center (CAC), his superior kept Detective Diaz on the case when he reported the sexual component.

¶ 9 Detective Isakson essentially corroborated Detective Diaz's testimony, but also testified that she interviewed B.B. alone in the hospital room and took photographs of her injuries. On cross-examination, Detective Isakson further testified that at the hospital B.B. did not mention defendant putting her fingers inside B.B.'s vagina.

¶ 10 Nevarez , a Chicago Public School Bilingual teacher, testified that she taught both B.B. and her younger sister A.B. It was typical for only A.B. to be in school. On the day of the Book Fair, only A.B. was given money to purchase books, which raised a red flag for Nevarez. When questioned, B.B. admitted defendant gave her no money and was hitting her again. B.B. further

admitted defendant hit her with a wooden stick and revealed marks on her skull and stomach. Following protocol, Nevarez notified the school and the social worker contacted DCFS. In addition, B.B. reported defendant made her clean the floor with a rag and undiluted Clorox, which left burns on her hands. Defendant also hit B.B. when she failed to cook a satisfactory meal and B.B. was only allowed to eat her siblings' leftovers. Defendant routinely isolated B.B. in the bedroom and hit her harder out of her siblings' view. On occasion, defendant made B.B. sleep in the dark, damp basement where the tenants did their laundry. On the days B.B. did not come to school, defendant made B.B strip naked, bit her nipples and touched her "down there." Defendant told B.B. she was responsible for her father abandoning their family.

¶ 11 Dr. Russell Eisenberg testified that he first met B.B. in the emergency room. After practicing emergency medicine for 29 years he recalled "this [was] visually the most horrific case of child abuse" he had ever seen. B.B. told him defendant had been hitting her with sticks, biting her all over her body, and touching her vagina. He observed B.B. had some old resolving bruising on the right side of her face and temple area and a hematoma on the left posterior scalp. B.B. also exhibited many stages of bruising on her back, shoulders and upper-arms and scabbed lesions the shape of bite marks on her back, nipples, abdomen and buttocks. He did not observe any bruising on her genitals and her hymen appeared intact, although he noted that there were often no signs of penetration with abuse. On cross-examination, he testified that when he specifically asked B.B. if defendant penetrated her vagina she said no, only touched her.

¶ 12 The trial court found defendant guilty of two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2008)), two counts of aggravated battery of a child (720 ILCS 5/12-4.3(a) (West 2008)), and aggravated criminal sexual abuse (720 ILCS 5/12-16(a)(2) (West 2008)). Following a sentencing hearing, the trial court sentenced defendant to 20

years' imprisonment for predatory criminal sexual assault, 10 years' imprisonment for aggravated battery of a child, and 7 years' imprisonment for aggravated criminal sexual abuse, the sentences to run consecutively. Defendant filed a motion to reconsider the sentence arguing her sentence for aggravated criminal sexual abuse should have been ordered to run concurrent with her other sentences because criminal sexual abuse was not an offense enumerated under the mandatory consecutive sentencing statute. The trial court denied defendant's motion, finding B.B. suffered severe bodily injury, and thus, the aggravated criminal sexual abuse sentence was to be served consecutively to the other sentences.

¶ 13 II. ANALYSIS

¶ 14 On appeal, defendant contends that the State failed to prove the offense of aggravated criminal sexual abuse beyond a reasonable doubt because there was no evidence defendant pulled on the victim's vagina for her own sexual gratification. When a sufficiency of the evidence challenge is raised, 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 were proven beyond a reasonable doubt. *People v. Smith*, 185 Ill. 2d 532, 541 (1999). We will not overturn a criminal conviction on appeal unless the evidence is so improbable or unsatisfactory as to supply reasonable doubt of defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is in the province of the trier of fact to determine the credibility of witnesses and to resolve any conflicts in the testimony. *People v. Sykes*, 341 Ill. App. 3d 950, 983 (2003). We will not substitute our judgment for that of the trier of fact on these matters. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009).

¶ 15 Pursuant to section 12-16(a)(2) (720 ILCS 5/12-16(a)(2) (West 2008)), the State must prove defendant committed an act of sexual conduct upon B.B. Sexual conduct has been 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 * * * for the purpose of sexual gratification or arousal of the victim or the accused." 720 ILCS 5/12–12(e) (West 2008). Although the phrase "sexual gratification or arousal" is not specifically defined, the intent to arouse can be established by circumstantial evidence and the trier of fact may infer a defendant's intent from her conduct. *People v. Alexander*, 369 Ill. App. 3d 955, 957 (2007). In addition, a defendant's intent to arouse or gratify herself sexually can be inferred solely from the nature of the act. *People v. Burton*, 399 Ill. App. 3d 809, 813-14 (2010) (where the reviewing court determined that no sexual penetration was required, simply touching the minor's breasts inside her bra was enough for the trial court to reasonably determine that the defendant intended to arouse or gratify himself sexually).

¶ 16 Here, testimony at trial revealed defendant bit B.B. on her breasts, nipples and buttocks and touched her vagina. B.B. also testified that defendant on several occasions put her fingers inside B.B.'s vagina and it felt like "something was scraping [her] on the inside." In its ruling, the trial court noted "[i]t was a combination of physical abuse, torture and sexual gratification through manipulation and permanent disfigurement of scarring *** on the sex organs of the victim." Thus, we cannot say that the evidence was insufficient when under Illinois law the trier of fact may infer defendant's intent to arouse solely from the nature of the act. See *People v. Kolton*, 347 Ill. App. 3d 142, 148 (2004) (the reviewing court determined that "[c]ontact between defendant's finger and the victim's vagina is touching of a sexual nature and implies sufficiently that defendant was motivated by sexual gratification"); *People v. Bailey*, 311 Ill. App. 3d 265, 267 (2000) (victim awoke from a nap and discovered defendant with his hand between her legs, rubbing her vagina through her jeans); *People v. Westpfahl*, 295 Ill. App. 3d 327, 334 (1998)

(defendant touched the victim's breasts). Accordingly, the evidence was sufficient to find defendant guilty beyond a reasonable doubt.

¶ 17 Defendant next contends that the trial court erred when it allowed Detective Diaz to testify on direct examination to statements B.B. made about being digitally penetrated by defendant. Although statements made prior to trial are generally inadmissible for the purpose of corroborating trial testimony or rehabilitating a witness, a prior consistent statement is admissible to rebut an express or implied suggestion on cross-examination that the witness is motivated to testify falsely or his testimony is a recent fabrication. *People v. Randolph*, 2014 IL App (1st) 113624, ¶ 15. To be admissible, the prior consistent statement must have been made before the time of the alleged fabrication, influence, or motive came into being. *People v. Bobiek*, 271 Ill. App. 3d 239, 243 (1995). A prior consistent statement admitted on this basis may be used solely to rehabilitate the witness, not as substantive evidence. *Randolph*, 2014 IL App (1st) 113624, ¶ 15. We review the admission of such evidence for abuse of discretion. *People v. Mullen*, 313 Ill. App. 3d 718, 730 (2000).

¶ 18 At trial, B.B. testified on direct examination that defendant digitally penetrated her on several occasions. Defense counsel repeatedly asked B.B. on cross-examination whether she told Navarez, the ER doctor or Detective Isakson whether defendant digitally penetrated her and B.B. could not recall. Defense counsel also asked B.B. whether she spoke to the ASA about her forthcoming testimony a week before trial, as well as the ASA and Detectives Diaz and Isakson the day of trial. Following this line of questioning, Detective Diaz began to testify to statements B.B. made to him at the police station and defense counsel objected, arguing these statements were inadmissible because Detective Diaz did not testify at the pre-trial hearing. The State argued, and the trial court agreed, that defense counsel opened the door to the questioning when

he inferred that B.B. did not tell anyone prior to trial that defendant placed her finger in B.B.'s vagina.

¶ 19 Based on the implications of false testimony, the State was within its right to introduce a prior consistent statement to rehabilitate its witness. See *People v. Titone*, 115 Ill. 2d 413, 423 (1986) (prior consistent statement to ASA allowed where defense counsel's cross-examination implied State's witness was lying at trial). The record suggests that defense counsel asked B.B. pointed questions seeming to infer that she was coached to testify that defendant digitally penetrated her. The State then utilized her prior consistent statement made to Detective Diaz to combat this charge of fabrication. It was reasonable for the trial court to conclude that 12-year-old B.B. did not understand the legal ramifications of her statement. Furthermore, this was a bench trial and we presume that the trial judge knows the law and there is no evidence in the record to suggest Detective Diaz's testimony was used substantively. See *People v. McLaurin*, 2015 IL App (1st) 131362, ¶ 34; quoting *People v. Gaultney*, 174 Ill. 2d 410, 420 (1996) ("a reviewing court 'ordinarily presume[s] that the trial judge knows and follows the law unless the record indicates otherwise'"). Thus, if there was any error here it was harmless at best.

¶ 20 Defendant finally contends that the trial court improperly ordered her sentence for aggravated criminal sexual abuse to run consecutively to her sentence for aggravated battery because there was no evidence that B.B. suffered severe bodily harm. Defendant concedes that although counsel did object to the consecutive nature of defendant's sentences he did so on other grounds, thus the error was not preserved. We may consider unpreserved error pursuant to the plain error doctrine where the evidence was so closely balanced that the error alone threatened to tip the scales of justice against the defendant; or (2) the error was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *People v.*

Walker, 232 Ill. 2d 113, 124 (2009). Before applying either prong of the plain error doctrine, however, we must first determine whether an error occurred. *People v. Hillier*, 237 Ill. 2d 539, 545 (2010).

¶ 21 Under section 5-8-4(a) the court may impose consecutive sentences in each of the following circumstances:

> "(i) one of the offenses for which defendant was convicted was first degree murder or a Class X or Class 1 felony *and the defendant inflicted severe bodily injury*, or (ii) the defendant was convicted of a violation of Section 12-13, 12-14, or 12-14.1 of the Criminal Code of 1961" 730 ILCS 5/5-8-4(a)(i), (ii) (West 2008) (emphasis added).

In addition, any consecutive sentences imposed for triggering offenses must be served prior to, and independent of, any sentences imposed for nontriggering offenses. *People v. Curry*, 178 Ill. 2d 509, 539 (1997).

¶ 22 It is undisputed that defendant's conviction for predatory criminal sexual assault (720 ILCS 5/12-14.1(a)(1)(West 2008)) is a triggering offense as it is an enumerated offense. 730 ILCS 5/5-8-4(d)(2) (West 2008). It is also undisputed that defendant's conviction for aggravated battery to a child (720 ILCS 5/12-4.3(a)(West 2008)) is a Class X felony. 730 ILCS 5/5-8-4(d)(1) (West 2008). Therefore, we must determine whether the trial court appropriately ruled that defendant *inflicted severe bodily injury* rendering her aggravated battery to a child conviction a triggering offense.

¶ 23 A trial court's determination that a bodily injury is “severe” for purposes of consecutive sentencing may be reversed only if it is against the manifest weight of the evidence. *People v. Deleon*, 227 Ill. 2d 322, 332 (2008). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary,

or not based on the evidence presented. *Id.* Under the manifest weight standard, we give deference to the trial court as the finder of fact because it is in the best position to observe the conduct and demeanor of the parties and witnesses, and we will no substitute our judgment for that of the trier of fact. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 24 The record before us reveals that defendant repeatedly hit 12-year-old B.B. with defendant's hand, TV cable, and wooden stick, causing bruising to B.B.'s face, hands, temple area and scalp. Defendant also routinely bit B.B. on her back, nipples, abdomen, and buttocks, leaving marks and permanent scarring. At sentencing, the trial court noted:

> "this was nothing more than psychological physical torture of a young child over a period of time and there really is no excuse for the level of abuse that was dealt to this child. The treating physician indicated that it was the worst case of child abuse he had ever seen in his life. I can't find a flaw with that statement."

Furthermore, we reject defendant's suggestion that B.B.'s injuries did not rise to the level of severe because there was no significant hospitalization, gunshot wound or surgery. The manifest weight of the evidence is a differential standard and nothing in the law dictates the latter is required. See *People v. Witherspoon*, 379 Ill. App. 3d 298, 310 (2008) (the reviewing court deferred to the trial court's finding that the bruising of the victim's legs, ankle, and upper arm was a "severe bodily injury"); *People v. Townes*, 94 Ill. App. 3d 850, 855 (1981) (the reviewing court concluded there was no reason to disturb the trial court's discretion regarding the issue of whether severe bruising of the face and neck, inflicted during the commission of a Class X felony, was a severe bodily injury). Accordingly, we cannot say that the trial court's finding that B.B. suffered severe bodily injury was against the manifest weight of the evidence.

¶ 25 For the foregoing reasons, we affirm the trial court's judgment.

¶ 26 Affirmed.