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2020 IL App (3d) 190051-U

Order filed December 4, 2020

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2020

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 12th Judicial Circuit, Will County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-19-0051
v.	)	Circuit No. 15-CF-509
	)	
WILLIAM GREGORY SNOW,	)	Honorable Daniel L. Kennedy,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Holdridge and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The court did not abuse its discretion by admitting into evidence, under the excited utterance hearsay exception, text messages between the victim and defendant's son, the contents of their phone conversation, and photographs of a letter written by the victim; (2) the court did not abuse its discretion by admitting the victim's prior consistent statements, as they were entered as substantive evidence under the excited utterance hearsay exception, not as testimony-bolstering evidence; (3) the court did not abuse its discretion or violate the best evidence rule by admitting photographs of a letter written by the victim; and (4) the State proved defendant guilty of the charged offenses beyond a reasonable doubt.

¶ 2 Defendant, William Gregory Snow, appeals his convictions for two counts of criminal sexual assault, two counts of aggravated criminal sexual abuse, and one count of misdemeanor battery. Defendant argues: (1) the State repeatedly introduced inadmissible hearsay, thereby denying him a fair trial; (2) the State used hearsay evidence as improper prior consistent statements to bolster its witness's testimony; (3) the court erred by allowing the State to introduce People's Exhibit Nos. 11A and 11B in violation of the best evidence rule; and (4) the State failed to prove defendant guilty beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant with two counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(2), (a)(4) (West 2016)), two counts of aggravated criminal sexual abuse (*id.* § 11-1.60(d)), and one count of misdemeanor battery (*id.* § 12-3(a)(2)). After a bench trial, the court found defendant guilty of aggravated criminal sexual abuse and battery, and not guilty of criminal sexual assault. Defendant filed a motion for a new trial, alleging that he received ineffective assistance of counsel, which the court granted.

¶ 5 At the subsequent jury trial, testimony showed that defendant's and T.M.'s families had a close relationship. The families lived on the same street, six houses apart. On the evening in question, defendant was 50 years old and T.M. was 16 years old. Defendant's family was getting ready to host a graduation party. T.M.'s family helped with the preparations. Sometime after midnight, T.M. fell asleep in defendant's family room while T.M.'s mother, Evelyn M., and defendant's wife, Sheryl Snow, prepared food in the kitchen. When Sheryl and Evelyn M. finished, they took the food to T.M.'s house.

¶ 6 T.M. testified that, after Sheryl and Evelyn M. left, she felt someone rubbing her "back down to [her] arm." T.M. asked the person to stop, but they continued. The person then put their

hands down T.M.'s sweatpants. Again, T.M. told the person to stop. She realized defendant was the person touching her when he said, "[T]ell me to stop if I do anything you do not like." T.M. told defendant to stop a third time. Defendant then "put his fingers under [her] underwear and went from the top of [her] butt all at [*sic*] way to the front of [her] vagina." In doing so, defendant "traced his fingers through *** [her] butt cheeks through the lips of [her] vagina into the top of [her] vagina." Defendant's fingers did not penetrate T.M.'s anus, nor did they enter her vagina. However, defendant did touch T.M.'s anus, and his fingers went between the lips of her vagina. For the fourth time, T.M. told defendant to stop. Defendant put his hand on T.M.'s waist and "leaned down and bit [her] ear." When T.M. once more told defendant to stop, he said that T.M. "deserved to feel incredible" and he "wanted to make [her] feel incredible." T.M. removed defendant's hand, stood up, grabbed her keys, and left defendant's residence. T.M. was "frantic" as she ran to her vehicle. She wept as she drove home.

¶ 7 When T.M. arrived at her home, she texted C.S., her close friend and defendant's son, that she was "scared and that [defendant] had touched" her. In her text message, she said that she did not want to tell her parents or Sheryl what happened because she did not want to "ruin a friendship." T.M. spoke with C.S. on the phone for approximately two hours. C.S. testified that T.M. told him that "[defendant] was touching her back and also her butt and trying to get inside of her pants." T.M. tried multiple times to tell C.S. what happened, but C.S. had trouble understanding her because she was "sobbing hysterically."

¶ 8 To facilitate better communication during their phone conversation, C.S. instructed T.M. to write a letter describing what happened and read it back to him. C.S. could hear T.M. sniffling as she wrote. T.M.'s hands were shaking so badly that her first letter was illegible. C.S. told her to rewrite the letter while they were still on the phone, and she did so immediately. In her second

letter, T.M. said that defendant "went into [her] sweat pants and grabbed [her] butt, then put [his] finger under [her] underwear starting from the top of [her] butt going all the way down."

¶ 9 T.M. used her cell phone to photograph the legible second version of her letter. She testified that her second letter was a verbatim copy of her first letter. T.M. could not recall what happened to the illegible first copy. She gave the physical copy of her second letter to C.S., who later gave the letter to Evelyn M., who also photographed it. Evelyn M. sent the second letter and her photograph of it to the officer responsible for investigating the case after T.M. reported the incident to her high school counselor. T.M. testified that exhibit Nos. 11A and 11B was a two-page document containing two photographs of her second letter.

¶ 10 The jury found defendant guilty on all counts. The court sentenced defendant to 180 days in jail, three years of sex offender probation, and lifetime sex offender registration. Defendant appeals.

¶ 11 II. ANALYSIS

¶ 12 Defendant argues that (1) the State repeatedly introduced inadmissible hearsay, thereby denying him a fair trial, (2) the State used hearsay evidence as improper prior consistent statements to bolster T.M.'s testimony, (3) the court erred by allowing the State to introduce exhibit Nos. 11A and 11B in violation of the best evidence rule, and (4) the State failed to prove defendant guilty beyond a reasonable doubt. We disagree. The court did not abuse its discretion in admitting the contested evidence, and the evidence, viewed in the light most favorable to the State, was sufficient to prove defendant guilty beyond a reasonable doubt.

¶ 13 A. Evidentiary Issues

¶ 14 Before addressing defendant's argument regarding the court's evidentiary rulings, we must determine what standard of review to apply. The State insists we should review the court's

decision for an abuse of discretion, while defendant urges us to apply *de novo* review. "Reviewing courts generally use an abuse-of-discretion standard to review evidentiary rulings rather than review them *de novo*." *People v. Caffey*, 205 Ill. 2d 52, 89 (2001). "An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *Id.* However, we will apply *de novo* review "[w]here a trial court's exercise of discretion has been frustrated by an erroneous rule of law." *People v. Williams*, 188 Ill. 2d 365, 369 (1999).

¶ 15 Here, the court exercised discretion when it made its various evidentiary determinations; therefore, we will review the court's rulings for an abuse of discretion. See *Caffey*, 205 Ill. 2d at 89 ("The decision whether to admit evidence cannot be made in isolation. The trial court must consider a number of circumstances that bear on that issue, including questions of reliability and prejudice.").

¶ 16 1. Excited Utterance Hearsay Exception

¶ 17 Defendant argues that he was denied a fair trial because the State repeatedly introduced hearsay evidence, specifically T.M. and C.S.'s text messages, the contents of their phone conversation, and exhibit Nos. 11A and 11B, which consisted of two photographs of T.M.'s second letter. Hearsay is an out-of-court written or verbal statement "offered in evidence to prove the truth of the matter asserted." Ill. R. Evid. 801(c) (eff. Oct. 15, 2015). Hearsay evidence is inadmissible unless it falls under a recognized exception, such as the excited utterance hearsay exception. Ill. R. Evid. 802 (eff. Jan. 1, 2011); Ill. R. Evid. 803(2) (eff. Sept. 28, 2018). To be an excited utterance, a statement must satisfy three requirements: "(1) there must be an occurrence sufficiently startling to produce a spontaneous and unreflecting statement, (2) there must be an absence of time for the declarant to fabricate the statement, and (3) the statement must relate to

the circumstances of the occurrence." *People v. Williams*, 193 Ill. 2d 306, 352 (2000). Courts consider the totality of the circumstances when determining whether hearsay evidence falls under the excited utterance exception, "including time, 'the nature of the event, the mental and physical condition of the declarant, and the presence or absence of self-interest.' " *Id.* (quoting *People v. House*, 141 Ill. 2d 323, 382 (1990)).

¶ 18 Defendant insists the communications in question occurred after enough time passed following the incident that they no longer qualified as excited utterances. "[T]he period of time that may pass without affecting the admissibility of a statement under the spontaneous declaration exception varies greatly." *Id.* at 353 (citing *People v. Gacho*, 122 Ill. 2d 221 (1988) (statement made 6½ hours after the incident was admissible); *People v. Newell*, 135 Ill. App. 3d 417 (1985) (statement made 20 minutes after the incident was properly excluded)). " 'The proper question is whether the statement was made while the excitement of the event predominated.' " *People v. Smith*, 152 Ill. 2d 229, 260 (1992) (quoting M. Graham, Cleary & Graham's Handbook of Illinois Evidence § 803.3, at 627 (5th ed. 1990)).

¶ 19 Instances of sexual assault and sexual abuse are startling events for excited utterance hearsay exception purposes. See *People v. Darr*, 2018 IL App (3d) 150562, ¶ 57. From our review of the record, mere minutes passed between the incident where defendant touched T.M.'s vagina, anus, and buttocks and the text messages that led to T.M.'s phone conversation with C.S. T.M. described her mental state as "frantic," and spent a significant portion of the phone conversation crying hysterically, to the point that C.S. could not understand what she was saying. C.S. testified that he could hear T.M. sniffling as she wrote out her letter describing what took place, which she created at his request. See *Smith*, 152 Ill. 2d at 260 (an officer's prompting did not destroy the declarant's statement's spontaneity). These facts indicate that T.M.'s text

message conversation with C.S., and the contents of their phone conversation were all made while the excitement of the incident predominated T.M.'s consciousness.

¶ 20 The court also properly admitted exhibit Nos. 11A and 11B, though as photographs of T.M.'s second letter they present a more complicated evidentiary question. T.M.'s second letter qualifies as an excited utterance because she wrote it in the wake of an exciting event, its contents related to the exciting event, and she wrote it while the excitement of the event in question predominated, as indicated by the fact that her hand was shaking so badly that her initial letter was illegible. See *Williams*, 193 Ill. 2d at 352; *Smith*, 152 Ill. 2d at 260. Duplicates are "admissible to the same extent as an original unless (1) a genuine question is raised as to the authenticity of the original or (2) in the circumstances it would be unfair to admit the duplicate in lieu of the original." Ill. R. Evid. 1003 (eff. Jan. 1, 2011). Defendant does not challenge the second letter's authenticity, nor was it unfair to admit the photographs instead of the second letter itself. See *infra* ¶¶ 27-28. Because T.M.'s second letter fell under the excited utterance hearsay exception, and duplicates of the second letter are admissible to the same extent as the second letter itself, exhibit Nos. 11A and 11B were properly admitted into evidence.

¶ 21 Defendant also argues that the text messages between T.M. and C.S. and exhibit Nos. 11A and 11B cannot be excited utterances because they are written, not oral, statements. This argument fails, as Illinois courts have recognized that the excited utterance hearsay exception extends to written documents. See, *e.g.*, *People v. Vinson*, 49 Ill. App. 3d 602, 606-07 (1977) (holding that a written statement from the victim in a nearby address book was an excited utterance); *People v. Alsup*, 373 Ill. App. 3d 745, 758 (2007) (holding that a 911 dispatcher's shorthand notations memorializing police officers' excited utterances were admissible). The circuit court found that the challenged evidence qualified as excited utterances based on "what

[T.M.] testified as to her state of mind and beliefs." The court did not abuse its discretion in reaching this conclusion.

¶ 22 2. Prior Consistent Statements

¶ 23 Next, defendant argues the State improperly used hearsay evidence as prior consistent statements to bolster T.M.'s testimony. Under the Illinois Rules of Evidence, prior consistent statements are generally inadmissible unless they are "otherwise admissible under evidence rules." Ill. R. Evid. 613(c) (eff. Sept. 17, 2019); see *People v. Ruback*, 2013 IL App (3d) 110256, ¶ 26 ("Such statements are inadmissible hearsay and may not be used to bolster a witness's testimony.").

¶ 24 Rehabilitative prior consistent statements, which are inadmissible bolstering evidence, are distinct from substantive prior consistent statements, which are admissible if they fall under a widely recognized hearsay exception. See Ill. R. Evid. 613(c) (eff. Sept. 17, 2019); see also *People v. Stull*, 2014 IL App (4th) 120704, ¶ 100 ("When *** a prior statement is offered at trial as *substantive* evidence under an exception to the hearsay rule, the mere fact that the statement is consistent with the declarant's trial testimony does not render that prior statement no longer admissible." (Emphasis in original.)); *People v. Watt*, 2013 IL App (2d) 120183, ¶ 43 (holding that the victim's prior consistent statement was admissible as substantive evidence under the excited utterance hearsay exception).

¶ 25 As previously discussed, the circuit court did not abuse its discretion by admitting T.M.'s statements into evidence under the excited utterance hearsay exception. *Supra* ¶¶ 17-21. Because the court admitted the statements defendant contests as substantive evidence via a widely recognized hearsay exception, it does not matter that they were consistent with T.M.'s trial testimony. See *Stull*, 2014 IL App (4th) 120704, ¶ 100.

¶ 26 3. Best Evidence Rule

¶ 27 Defendant also argues that the circuit court erred by allowing exhibit Nos. 11A and 11B into evidence, saying the photographs violated the best evidence rule. "To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute." Ill. R. Evid. 1002 (eff. Jan. 1, 2011). A duplicate is admissible to the same extent as an original writing, unless there is a genuine dispute regarding the authenticity of the original, or if admitting the duplicate in lieu of the original would be unfair. *Supra* ¶ 20. "The best evidence rule states a preference for the production of original documentary evidence when the contents of the documentary evidence are sought to be proved." *People v. Vasser*, 331 Ill. App. 3d 675, 685 (2002). "There is no general rule that a party must produce the best evidence that the nature of the case permits." *People v. Tharpe-Williams*, 286 Ill. App. 3d 605, 610 (1997). "The best evidence rule does not apply where a party seeks to prove a fact that has an existence independent of the documentary evidence ***." *Id.*

¶ 28 Defendant's argument misconstrues the best evidence rule, which does not apply here. Exhibit Nos. 11A and 11B sought to prove an event—that defendant touched T.M.'s vagina, anus, and buttocks—that existed independent of both the photographs and the letter presented in the photographs. T.M. testified to her firsthand experiences and personal observations of those events. Her testimony did not rely on the content of her letters. Therefore, the original versions of her letters were not required. Certainly, it would have been preferable for the State to submit the original version of either T.M.'s first or second letter into evidence, rather than photographs of T.M.'s second letter. But the existence of T.M.'s letters does not render exhibit Nos. 11A and 11B insufficient. See *id.* The court did not abuse its discretion, nor did it violate the best

evidence rule, when it admitted exhibit Nos. 11A and 11B into evidence under the excited utterance hearsay exception.

¶ 29 B. Sufficiency of the Evidence

¶ 30 Defendant further argues that the State failed to prove his guilt beyond a reasonable doubt. "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). It is not the reviewing court's role to retry the defendant; instead, we must ask 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.) *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact must "resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts." *People v. Gray*, 2017 IL 120958, ¶ 35. A single witness's testimony, if positive and credible, is sufficient to support a conviction. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). The trier of fact need not "search out a series of potential explanations compatible with innocence, and elevate them to the status of a reasonable doubt." *People v. Russell*, 17 Ill. 2d 328, 331 (1959).

¶ 31 The State charged defendant with criminal sexual assault, aggravated criminal sexual abuse, and battery. "A person commits criminal sexual assault if that person commits an act of sexual penetration and *** is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim, and the victim is at least 13 years of age but under 18 years of age." 720 ILCS 5/11-1.20(a)(4) (West 2016). "A person commits aggravated criminal sexual abuse if that person commits an act of sexual penetration or sexual conduct with a victim who is at least 13 years of age but under 17 years of age and the person is at least 5 years older than the

victim." *Id.* § 11-1.60(d). "A person commits battery if he or she knowingly without legal justification *** makes physical contact of an insulting or provoking nature with an individual." *Id.* § 12-3(a)(2).

¶ 32 The record established the elements of the charged offenses. The essential details of T.M.'s account of the incident remained consistent across both trials. T.M. testified in graphic detail that defendant touched her vagina, anus, and buttocks, and that his fingers penetrated the lips of her vagina. C.S. testified that, during their phone conversation, T.M. told him that defendant "touched" her. T.M.'s letter, which she wrote to help her describe the incident to C.S., corroborated her trial testimony, including that defendant "went into [her] sweatpants and grabbed [her] butt, then put [his] finger under [her] underwear starting from the top of [her] butt going all the way down." The jury found T.M.'s testimony sufficiently credible to convict defendant of all offenses charged. From our review of the record, this determination was not unreasonable. Therefore, we find that the evidence was sufficient to prove defendant's guilt of each of the charged offenses beyond a reasonable doubt.

¶ 33 III. CONCLUSION

¶ 34 The judgment of the circuit court of Will County is affirmed.

¶ 35 Affirmed.