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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re R.S., a Person Coming Under
the Juvenile Court Law.

B286232
(Los Angeles County
Super. Ct. No. TJ22871)

THE PEOPLE,

Plaintiff and Respondent,

v.

R.S.,

Defendant and Appellant.

APPEAL from a judgment of the Superior Court for Los Angeles County, Catherine J. Pratt, Judge. Affirmed.

Holly Jackson, under appointment by the Court of Appeal, for Defendant and Appellant.

Xavier Becerra, Attorney General, Gerald A. Engler, Chief Assistant Attorney General, Lance E. Winters, Assistant Attorney General, Paul M. Roadarmel, Jr., and Charles J. Sarosy, Deputy Attorneys General, for Plaintiff and Respondent.

In a petition filed under Welfare and Institutions Code section 602, minor R.S. was alleged to have committed forcible rape (Pen. Code, § 261, subd. (a)(2)) and forcible oral copulation (Pen. Code, § 288a, subd. (c)(2)(A)) of Jeanette A. The court heard testimony from several witnesses: Jeanette, the deputy sheriff who found her immediately after the incident (Deputy Marinelli) and other deputies who participated in detaining R.S. and bringing him to Jeanette for a field show-up; forensic nurses who examined Jeanette and R.S. within hours after the incident; several people who lived across the street from the location of the incident; a friend of R.S.; and R.S. himself. The juvenile court concluded that the case came down to the testimony of Jeanette, R.S., and, to some extent, Deputy Marinelli. The court found Jeanette (who testified that the sexual encounter was forcible and not consensual) to be credible, and R.S. (who testified that the sexual encounter was consensual) not to be credible, and therefore found both counts to be true.

R.S. contends there was insufficient evidence to sustain the petition because there was “no definitive proof supporting forced sex” since there was only one person’s word against another, and since the circumstantial evidence could point to more than one conclusion regarding whether the encounter was consensual or forcible, the juvenile court was required to conclude that the required intent and/or mental state of R.S. was not proved. These are arguments for the juvenile court, and are not appropriate on appeal. Accordingly, we affirm the judgment.

BACKGROUND

Because of the nature of R.S.'s contentions on appeal, we need not discuss all of the testimony produced at the adjudication. Instead, we focus our discussion primarily on the evidence relied upon by the juvenile court in finding the allegations of the petition true, as well as R.S.'s testimony.

A. *Relevant Testimony for the Prosecution*

1. *Jeanette's Testimony*

On the evening of August 4, 2017, Jeanette was home, drinking a few beers and taking care of her baby. When her boyfriend came home, he was upset that she was drinking and took her to her ex-husband's house. When they got there, the boyfriend and ex-husband started talking, and she walked away because she was embarrassed and disappointed in herself, and wanted to be alone.

She walked down the street, crossed the street, and stopped about 10 houses away, in front of a parking lot for a church. She sat on the curb in about three feet of space between a van and another parked car. She put her head down and was crying. It was around 9:25 p.m., and was dark outside.

Shortly after she sat down, someone came up behind her and asked if she was okay. She turned around when she heard the voice, and saw it was a young man identified in court as R.S.; he was wearing a muscle shirt and carrying a black backpack. She told him that she had an argument with her boyfriend, but that she was okay.

R.S. hunched down and hugged her from the side. He did not do anything inappropriate at first, but after a few minutes he put his hand inside her shirt and bra and began squeezing and feeling her breast. As soon as she felt that, she stopped crying and tried to calm herself down. She had been sexually molested for years when she was young, and she just froze. She kept blaming herself because she had been drinking, and if she had not walked away this would not be happening.

She tried to push his hand away, but then he pulled her shirt and bra down and started sucking on her breast. She was able to pull her shirt and bra back up, and he stood up. She thought about screaming, but church services were going on, and it was really loud, so she thought no one would hear her and he might hurt her.

At that point, she was sitting with her legs pulled up to her chest. R.S. came around and stood in front of her. He pulled her legs to straighten them, then pushed her back to the ground gently. She tried to get up, but he pushed her back down and started to pull her pants down. She again tried to get up, but he told her that everything was going to be okay, and he pushed her back down. She did not say anything to him because she was afraid he might hurt her.

R.S. started to pull her pants down again; she stretched out her legs to try to keep them from coming farther down, but he was able to pull them down to her knees. She was not wearing underwear. R.S. put his mouth on her vagina and started sucking on her. She continued to try to get up, but he stopped her, got on top of her and put his penis in her vagina. After moving it in and out a couple of times, he stood up and stood next to her. He pulled his penis out and told her to suck it.

She “lost it” and said “No.” He said, “Fuck you, bitch. You’re going to suck my dick”; then he punched her in the head and kicked her on her side. She covered her face with her hands and started sobbing. R.S. walked away in the direction of a nearby park, but a few seconds later he came back, picked up his backpack, kicked her in her left breast area, and took off running.

When R.S. kicked her, Jeanette started screaming and crying very loudly. A few minutes later, a deputy sheriff came and asked her what happened. She still had her pants down and was trying to pull them up. She told the deputy about what happened, and five to eight minutes later, other deputies brought someone to her to identify; it was R.S. She told the deputies that he was the person who raped her.

2. Deputy Marinelli’s Testimony

Deputy Nicolas Marinelli was on duty in a patrol car near the location of the incident at 9:25 p.m. on August 4, 2017. As he was crossing the intersection of the road where the incident happened, he heard screaming unlike any he had ever heard before. He backed up and turned down the road, toward the screaming, trying to find its source. As he was driving he saw a Black male running in his direction on the sidewalk. He continued driving slowly in the direction of the screaming and found a woman, Jeanette, sitting on the sidewalk between two parked cars. As he approached her, he saw that she was crying and had her pants down to her knees. She told him she had been raped.

He got a description of the suspect from Jeanette -- Black male, approximately 16 years old, wearing a black backpack -- and broadcast it over his radio to other units, asking them to check the vicinity for the suspect. Back-up arrived within two to three minutes. About 10 minutes after that, R.S. was brought to the scene for a field show-up. As soon as she saw R.S., Jeanette (who had been placed in the back seat of a patrol car) cried uncontrollably and started hitting the windows.

From the time he first found Jeanette until she left to go to the hospital, Jeanette cried uncontrollably; it was very difficult for him to get information from her about the suspect and what happened. Although he could smell alcohol coming from her, he did not see any symptoms of her being under the influence of alcohol. He testified that this incident “is something I will probably remember for a long time.”

B. *R.S.’s Testimony*

On the night of the incident, R.S. was in a nearby park, playing basketball with friends. At some point, he left the park to go to the store to get a drink. He was on his skateboard, on the opposite side of the street as Jeanette. At some point, he crossed the street because there was more light on that side of the street. He walked down the sidewalk and saw Jeanette sitting on the curb by a parked van, crying.

Jeanette said hi to him as he was walking past her, so he said hi back. They began to talk; she was sitting on the curb and he was standing behind her. They talked for about five minutes. She asked him questions about where he was going, how old he was, and where he lived. Then she asked, “What are you doing out here so late? Shouldn’t

you be home?” He told her that he was going to the store to get something to drink, and then was going home. She said, “Oh, well, my boyfriend, he just left me out here and I’m sitting right here waiting for him to come.” She then said, “Do you want to have sex?”

Jeanette pulled her pants down to her ankles, and he pulled his pants down and they started having sex. His penis was inside her for only a few seconds -- he moved it in and out four or five times and did not ejaculate -- then he stopped because he “wasn’t feeling it.” He told her he was done, pulled up his pants, got on his skateboard and started to go in the direction of the store. He changed his mind and turned around to go back to the park. As he was passing by the church, he heard Jeanette screaming, and then saw the police passing by.

R.S. denied ever touching Jeanette anywhere, except having his penis in her vagina. R.S. also testified that Jeanette never told him to stop, never tried to push him off of her, and never did anything to indicate that she did not want to have sex with him.

C. Other Testimony

In addition to the testimony of Jeanette and Deputy Marinelli, the prosecution presented testimony from a deputy sheriff who was with Jeanette during the field show-up and transported her to the hospital for a SART exam, a deputy sheriff who detained R.S. at the basketball court in the park and transported him to the scene of the incident for a field show-up, and the nurse who conducted the SART exam on Jeanette. The nurse observed several bruises on Jeanette’s upper and lower extremities and a superficial abrasion to the right inner cheek of

her mouth; she found no injuries to Jeanette's external or internal genital or anal areas. She testified that it is not out of the ordinary to find no injury to the genital area, and explained that one is less likely to find injury when a rape victim is frightened or submits out of fear.

R.S. presented testimony from his friend who was playing basketball with him, three people who lived across the street from where the incident occurred and heard Jeanette screaming, and the nurse who conducted the SART exam on R.S. The nurse found no bruises, scratches, or tearing of the skin on R.S.'s hands, and no injuries on any part of his body. She testified that at least 80 percent of the sexual assault suspects that she had examined had no injuries.

D. *Juvenile Court's Ruling*

In making its ruling, the juvenile court began by noting: "There are two counts in this petition, and there has been a number of witnesses, many exhibits. In my mind it comes down primarily to the testimony of [Jeanette], of [R.S.], and [to] some degree the observation and testimony of Deputy Marinelli." Addressing the other evidence, the court stated: "The physical findings from the SART nurses is not particularly helpful, . . . one way or the other. . . . [¶] And I didn't particularly find the evidence of the various percipient witnesses . . . I thought they were perfectly credible, but I don't think that any of them actually observed the encounter, whether it was consensual or not. And, therefore, it's not particularly relevant to my consideration."

The court concluded: "It comes down to, frankly, credibility. And I have to say that I did not find his version of the facts credible. . . . [¶]

I found [Jeanette] to be credible. . . . And so I have to say that, based upon my observations of the witnesses as they've testified, I felt she was more credible. I'm more inclined to believe her version of the story. [¶] I think it is also significant or was also significant in my mind the description, particularly that Deputy Marinelli had of what she looked like and how she acted and what she said when he first encountered her."

The court found count 1 (forcible rape) to be true, and found count 2 (forcible oral copulation) to be true with respect to R.S. orally copulating Jeanette, but not with respect to Jeanette orally copulating R.S. The court ordered that R.S.'s care, custody and control be placed under the supervision of the probation department, with an order that he be suitably placed in a group home, and set a maximum confinement of 10 years.

R.S. timely filed a notice of appeal from the judgment.

DISCUSSION

As noted, R.S. raises a sufficiency of the evidence argument on appeal. He argues there was "no definitive proof supporting forced sex" since there was only one person's word against another, and that the circumstantial evidence -- the fact that R.S. "only penetrated [Jeanette] a couple of times and then stopped" -- could lead one reasonably to believe that if, as R.S. testified, Jeanette asked for the sexual encounter, she would have felt rejected by him, which would explain her distress. Thus, R.S. argues, because one could draw a reasonable conclusion from the circumstantial evidence that supports a finding of

innocence, we must reverse the judgment of the juvenile court. His argument is not one that is cognizable on appeal.

An appellate court's job when faced with a sufficiency of the evidence challenge is to "review the whole record to determine whether *any* rational trier of fact could have found the essential elements of the crime. . . . In applying this test, we review the evidence in the light most favorable to the prosecution and presume in support of the judgment the existence of every fact the [trier of fact] could reasonably have deduced from the evidence." (*People v. Zamudio* (2008) 43 Cal.4th 327, 357.) Even where the prosecution relies on circumstantial evidence, "[a]n appellate court must accept logical inferences that the [trier of fact] might have drawn from the circumstantial evidence." (*People v. Maury* (2003) 30 Cal.4th 342, 396.) "Although it is the [trier of fact's] duty to acquit a defendant if it finds the circumstantial evidence susceptible of two reasonable interpretations, one of which suggests guilt and the other innocence, it is the [trier of fact], not the appellate court that must be convinced of the defendant's guilt beyond a reasonable doubt. [Citation.] "'If the circumstances reasonably justify the trier of fact's findings, the opinion of the reviewing court that the circumstances might also reasonably be reconciled with a contrary finding does not warrant a reversal of the judgment. [Citation.]'" [Citation.]" (*People v. Kraft* (2000) 23 Cal.4th 978, 1053-1054.)

In this appeal, R.S. does not contend that Jeanette's testimony -- that she tried to push R.S.'s hand away from her breast, pulled her bra and shirt up to stop R.S. from sucking her breast, tried to keep R.S. from pulling down her pants, and repeatedly tried to get up after R.S.

pushed her down onto the ground -- does not show the force necessary to establish forcible rape or forcible oral copulation. Indeed, he acknowledges that “to establish force within the meaning of [the forcible rape statute], the prosecution need only show the defendant used physical force of a degree sufficient to support a finding that the act of sexual intercourse was against the will of the [victim].” (Quoting *People v. Griffin* (2004) 33 Cal.4th 1015, 1023-1024.)

Nor does R.S. assert that the circumstantial evidence is not at all susceptible to a reasonable interpretation that suggests guilt. Instead, he, in essence, challenges the juvenile court’s determination that Jeanette was credible and R.S. was not. This is not a challenge that is cognizable on appeal. “Conflicts and even testimony which is subject to justifiable suspicion do not justify the reversal of a judgment, for it is the exclusive province of the trial judge or jury to determine the credibility of a witness and the truth or falsity of the facts upon which a determination depends. [Citation.] We resolve neither credibility issues nor evidentiary conflicts; we look for substantial evidence.” (*People v. Maury, supra*, 30 Cal.4th at p. 403.)

Because Jeanette’s testimony -- which the juvenile court expressly stated it believed -- is sufficient to establish both forcible rape and forcible oral copulation, the judgment must be affirmed. (*People v. Zamudio, supra*, 43 Cal.4th at p. 357 [“A reversal for insufficient evidence ‘is unwarranted unless it appears “that upon no hypothesis whatever is there sufficient substantial evidence to support” the [trier of fact’s] verdict”].)

DISPOSITION

The judgment is affirmed.

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WILLHITE, J.

We concur:

MANELLA, P. J.

COLLINS, J.