DIVISION ONE
FILED: 07/31/2012
RUTH A. WILLINGHAM, CLERK
BY: sls

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION ONE

STATE OF ARIZONA,	)	1 CA-CR 10-0186
	)	
Appellee,	)	DEPARTMENT D
	)	
v.	)	**MEMORANDUM DECISION**
	)	(Not for Publication –
	)	Rule 111, Rules of the
ARVIN PRASAD,	)	Arizona Supreme Court)
	)	
Appellant.	)	
	)	

Appeal from the Superior Court in Maricopa County

Cause No. CR2009-141535-001 DT

The Honorable Christopher T. Whitten, Judge

AFFIRMED

Thomas C. Horne, Attorney General — Phoenix
by Kent E. Cattani, Chief Counsel,
Criminal Appeals/Capital Litigation Section
Attorneys for Appellee

James J. Haas, Maricopa County Public Defender — Phoenix
by Tennie B. Martin, Deputy Public Defender
Attorneys for Appellant

P O R T L E Y, Judge

¶1 This is an appeal under *Anders v. California*, 386 U.S. 738 (1967), and *State v. Leon*, 104 Ariz. 297, 451 P.2d 878 (1969). Counsel for Defendant Arvin Prasad has advised us that,

after searching the entire record, she has been unable to discover any arguable questions of law, and has filed a brief requesting us to conduct an *Anders* review of the record. Defendant was given the opportunity to file a supplemental brief but has not filed one.

FACTS[1]

¶2 Defendant owned a dry cleaning and alterations shop. He hired H., a college student, to work for him during her 2009 summer break. One week after she started, he asked her to come to work early. When she arrived, he took her to a restaurant and after they had lunch, drove her to his friend's house. There, under the guise of getting work receipts, he led her to one of the bedrooms, embraced her, and moved toward the bed. She hit him in the groin and across the face to get away because she felt like "[he was] not letting go." She also told him that she was quitting.

¶3 The following month, Defendant hired L., a seventeen-year-old high school student,[2] and asked her to work on a day the shop appeared to be closed. Soon after she arrived, Defendant asked her if she drank alcohol. She said yes, and he poured her two shots of liquor and prepared a mixed drink, which she

[1] We view the facts "in the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the defendant." *State v. Rienhardt*, 190 Ariz. 579, 588-89, 951 P.2d 454, 463-64 (1997) (citation omitted).
[2] L.'s age appeared in her work application.

consumed. Defendant then drove her to get lunch. Afterward, he took her to the same house where he had taken H., led her to a bedroom, and sexually assaulted her.[3]

¶4 L. testified that, after the assault, Defendant drove her around aimlessly instead of taking her home as she had asked. While stopped at a red light, she noticed police officers parked at a gas station and attempted to get out of the car. Defendant, however, grabbed her hand and refused to let her out. He subsequently drove to visit his former attorney, who called a taxi for her after hearing that she wanted to go home.

¶5 Meanwhile, L.'s mother had called the police because her daughter had not responded to phone calls or text messages over the course of several hours. She told officers that she had been to Defendant's shop twice that day looking for L. but it had been locked and empty even though L.'s car was parked outside. When an officer called Defendant that evening to ask about L., he indicated she had left the shop with her friends, but was unable to describe any of them. The officers subsequently drove to the shop and spotted L.'s purse and cell phone on the counter inside. The officer called Defendant again to ask if he would come and unlock the shop so that they could

[3] Defendant placed his body on top of L. and inserted his penis into her vagina even though L. told him to stop.

retrieve L.'s personal items, but he declined and abruptly ended the conversation when the officer attempted to ascertain what time L. left work.

¶6 The officers subsequently learned that L. had returned home after being assaulted, and arranged for her to be examined by a pediatric nurse practitioner. Her urinalysis revealed that she had likely consumed alcohol, and the officer who conducted a forensic interview noted that she may have been intoxicated. Police later found a liquor bottle label in the shop's trash and a half-empty bottle of alcohol in the house where L. had been assaulted. Defendant was arrested the following day.

¶7 Defendant was charged with and convicted of: contributing to the delinquency of a child, a class 1 misdemeanor; sexual assault, a class 2 felony; kidnapping, a class 2 felony; unlawful imprisonment, a class 6 felony; false reporting to a law enforcement agency, a class 1 misdemeanor; and assault (of H.), a class 3 misdemeanor.[4] Additionally, the jury found as aggravating circumstances that the offenses caused physical, emotional, or financial harm to the victim and involved an abuse of a position of trust. Defendant was sentenced to fourteen years in prison, followed by seven years

[4] Defendant was also charged with sexual assault (to wit: digital-vaginal contact), a class 2 felony, and assault (of V.), a class 3 misdemeanor, but both charges were later dismissed.

of probation, and received credit for 256 days of presentence incarceration.[5]

¶8 We have jurisdiction over this appeal pursuant to Article 6, Section 9, of the Arizona Constitution, and Arizona Revised Statutes ("A.R.S.") sections 12-120.21(A)(1), 13-4031, and -4033(A)(1) (West 2012).

DISCUSSION

¶9 Defendant has asked his attorney to raise the following issues on his behalf: insufficiency of the evidence, and prosecutorial misconduct and perjured testimony. We will address each issue in turn.

I. Sufficiency of the Evidence

¶10 Defendant argues that the verdict was not supported by the evidence. "Evidence is sufficient if . . . a rational trier of fact could have found guilt beyond a reasonable doubt." *State v. Rienhardt*, 190 Ariz. 579, 588, 951 P.2d 454, 463 (1997) (citation omitted). In reviewing its sufficiency, "we examine the evidence in the light most favorable to sustaining the verdict, and resolve all reasonable inferences against the

[5] Defendant was sentenced to six months in jail for contributing to the delinquency of a child and false reporting to a law enforcement agency; an aggravated sentence of fourteen years in prison for sexual assault; an aggravated term of two years in prison for unlawful imprisonment; thirty days in jail for assault (of H.); and seven years of probation for kidnapping. The sentences for each crime other than kidnapping were ordered to run concurrently; probation was ordered to run consecutively to all of the other counts.

defendant." *Id.* at 588-89, 951 P.2d at 463-64 (citation omitted).

¶11 To convict Defendant of contributing to the delinquency of a child, the State had to prove that Defendant caused, encouraged, or contributed to the delinquency of a person under eighteen years of age. A.R.S. § 13-3613 (West 2012).[6] "Delinquency" includes "any act that tends to debase or injure the morals, health or welfare of a child." A.R.S. § 13-3612(1) (West 2012). At trial, L. testified that she consumed alcohol provided by Defendant when she was seventeen years old. The State also offered evidence that L. was under the influence of alcohol when she spoke with the police, and her urinalysis results indicated that she had consumed alcohol. Thus, there was sufficient evidence that Defendant provided alcohol to a minor in violation of a state law, which supports the conviction for contributing to the delinquency of a child.[7] *See Loveland v. State*, 53 Ariz. 131, 132, 141, 86 P.2d 942, 942-43, 946 (1939) (affirming defendants' convictions for contributing to the delinquency of a child based on furnishing alcohol to a minor); *see also State v. Cutshaw*, 7 Ariz. App. 210, 219, 437 P.2d 962,

[6] Absent material revisions after the date of an alleged offense, we cite a statute's current version.

[7] Defendant violated, and facilitated L.'s violation of, A.R.S. § 4-244(9) (West 2012). *See also* A.R.S. § 4-246(B) ("A person violating § 4-244, paragraph 9, . . . is guilty of a class 1 misdemeanor.").

971 (1968), *superseded in part by* Ariz. R. Crim. P. 15 (causing or encouraging child to violate law does not automatically violate contributing statute, but may be relevant to whether defendant's conduct impaired child's morals, health, or welfare).

¶12 To convict Defendant of sexual assault, the State was required to prove that he intentionally or knowingly engaged in sexual intercourse with L. without her consent. A.R.S. § 13-1406(A) (West 2012). The State presented evidence that Defendant inserted his penis into L.'s vagina despite her protest and while she was intoxicated. The evidence, therefore, supports the jury's verdict.

¶13 To demonstrate that Defendant committed the crime of kidnapping, the State was required to prove that he knowingly restrained L. with the intent to sexually assault her "or to otherwise aid in the commission of a felony." A.R.S. § 13-1304(A)(3) (West 2012). Here, the State presented evidence that Defendant restrained L. by lying on top of her and sexually assaulting her. Additionally, the jury could have inferred the requisite intent from testimony indicating that Defendant had planned to bring L. to his friend's house several days prior to the assault. Consequently, there was sufficient evidence to convict Defendant.

¶14 To prove unlawful imprisonment, the State was required to show that Defendant "knowingly restrain[ed] another person." A.R.S. § 13-1303(A) (West 2012). L. testified that Defendant grabbed her arm to prevent her from getting out of his car at a stop light after he refused to take her home. Thus, the jury could conclude that Defendant restrained L. against her will, in violation of § 13-1303. *See Boies v. Raynor*, 89 Ariz. 257, 259, 361 P.2d 1, 2 (1961) (citations and internal quotation marks omitted) ("The essential element of [unlawful] imprisonment is the direct restraint of personal liberty or the freedom of locomotion" by force or fear of force.).

¶15 To convict Defendant of false reporting to a law enforcement agency, the State had to prove that he knowingly made a false statement or misrepresented a fact to the police "for the purpose of interfering with the orderly operation of a law enforcement agency or misleading a peace officer." A.R.S. § 13-2907.01(A) (West 2012). On the day of the assault, while the police were looking for the young lady, Defendant told police that L. had left his shop with her friends. Other witnesses, however, corroborated L.'s testimony that she had been with Defendant until a cab brought her home. The jury was in the best position to evaluate the witnesses' credibility, and it apparently resolved any conflicts in the testimony against Defendant. *State v. Soto-Fong*, 187 Ariz. 186, 200, 928 P.2d

610, 624 (1996) (citation omitted) (jury determines witnesses' credibility); *State v. Williams*, 209 Ariz. 228, 231, ¶ 6, 99 P.3d 43, 46 (App. 2004) (citation omitted) (resolving conflicts in evidence and assessing credibility of witnesses is purview of the jury). We find sufficient evidence in the record to sustain the jury's verdict.

¶16 Finally, to convict Defendant of assault, the State was required to prove that he knowingly touched H. "with the intent to injure, insult or provoke" her. A.R.S. § 13-1203(A)(3) (West 2012). H. testified that Defendant embraced her and attempted to force her toward the bed until she physically resisted his advances by hitting him in the groin and face. Accordingly, sufficient evidence existed to convict Defendant of assault.

II. Prosecutorial Misconduct and Perjured Testimony

¶17 Defendant also raises, for the first time on appeal, prosecutorial misconduct and the admission of perjured testimony. Defendant does not, however, provide any examples of the State's misconduct or direct us to any portion of the proceedings, and our review of the record does not reveal fundamental error or prejudice. *See State v. Henderson*, 210 Ariz. 561, 567, ¶ 19, 115 P.3d 601, 607 (2005) (citations omitted).

¶18 We have read and considered counsel's brief, and have searched the entire record for reversible error. *See Leon*, 104 Ariz. at 300, 451 P.2d at 881. We find none. The record, as presented, reveals that all of the proceedings were conducted in compliance with the Arizona Rules of Criminal Procedure. Defendant was represented by counsel at all stages of the proceedings and the sentences imposed were within the statutory limits.

CONCLUSION

¶19 Accordingly, we affirm Defendant's convictions and sentences. After this decision has been filed, counsel's obligation to represent Defendant in this appeal has ended. Counsel must only inform Defendant of the status of the appeal and Defendant's future options, unless counsel identifies an issue appropriate for submission to the Arizona Supreme Court by petition for review. *State v. Shattuck*, 140 Ariz. 582, 585, 684 P.2d 154, 157 (1984). Defendant may, if desired, file a motion for reconsideration or petition for review pursuant to the Arizona Rules of Criminal Procedure.

/s/
_____
MAURICE PORTLEY, Judge

CONCURRING:

/s/
_____
JON W. THOMPSON, Presiding Judge

/s/
_____
JOHN C. GEMMILL, Judge