DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
July Term 2005

JEAN W. ELYSEE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D04-1414

[November 16, 2005]

KLEIN, J.

Appellant was convicted of attempted sexual battery of a person over the age of twelve and argues that the trial court improperly permitted the victim's mother to testify about her behavior following the incident, which was admitted to refute appellant's position that she had concocted the story. We affirm.

Appellant and the seventeen-year-old victim worked at the same place, and after they got off work about 10:00 p.m., he offered her a ride home. According to the victim he kissed her, and after she made it clear she did not want to be kissed, he put her hand on his penis, touched her breasts, and touched her vagina. Just after the victim had been able to stop appellant from doing anything further, an officer pulled in behind him and turned his blue lights on. The victim testified that at that point she was crying and was too scared to move.

The officer explained that he had been concerned that they might have been staking out a house in order to commit a robbery. After first telling the officer that appellant was taking her home, the victim then told him what actually happened, because she was afraid to leave with the appellant. The officer called her mother, who came and picked her up.

The mother testified that when she arrived her daughter was distraught, very upset, crying and shaking. The state was then allowed to ask, over appellant's objection, how the victim behaved during the period following the day of the incident, and the mother stated:

> For a while my daughter was very clingy with me. Went to the grocery store and she wouldn't even go to the restroom alone. That's not at all like her. She was very sullen. Cried a lot. Stayed in her room a lot. Wouldn't talk to anybody.

The objection raised in the trial court was that this testimony was not relevant. The state responded that appellant's defense was that the victim had fabricated the story and that her emotional state in the days after the incident refuted that defense. Appellant has not cited any case holding that the mother's observations of her daughter's behavior would not be relevant where, as in this case, the defense was taking the position that the victim had made the whole thing up. We conclude that it was relevant under these specific facts. Appellant did not argue that, if the evidence was relevant, the prejudicial impact outweighed its probative value. § 90.403, Fla. Stat. (2003).

Appellant also argues that the court erred in allowing the deputy to testify about what the victim told him, which occurred about fifteen to twenty minutes after the incident. The trial court admitted the testimony as an excited utterance under section 90.803(2), Florida Statutes (2003). The fact that this period of time had passed is not dispositive. *Rivera v. State*, 718 So. 2d 856 (Fla. 4th DCA 1998) (fifteen minutes); *Edmond v. State*, 559 So. 2d 85 (Fla. 3d DCA 1990) (an emotional description of the assailant given by a frightened eleven-year-old, two to three hours after the incident, where the child was excited and perhaps hysterical, was admissible as an excited utterance). Appellant has failed to demonstrate that the trial court abused its discretion in finding that the excited state in which the victim made these statements to the officer was sufficient to qualify the statements as excited utterances.

Affirmed.

WARNER and TAYLOR, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; Steven J. Levin, Judge; L.T. Case No. 03-3392 CF.

Carey Haughwout, Public Defender, and Tatjana Ostapoff, Assistant Public Defender, West Palm Beach, for appellant.

Charles J. Crist, Jr., Attorney General, Tallahassee, and Jeanine M. Germanowicz, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.