

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2013 KA 0372

STATE OF LOUISIANA

VERSUS

QUROY JOHNSON

Judgment rendered December 27, 2013.

Appealed from the
21st Judicial District Court
in and for the Parish of Tangipahoa, Louisiana
Trial Court No. 1003073
Honorable Elizabeth P. Wolfe, Judge

HON. SCOTT PERILLOUX
DISTRICT ATTORNEY
LEANNE MALNAR
PATRICIA AMOS
ASSISTANT DISTRICT ATTORNEYS
AMITE, LA

ATTORNEYS FOR
STATE OF LOUISIANA

LIEU T. VO CLARK
MANDEVILLE, LA

ATTORNEY FOR
DEFENDANT-APPELLANT
QUROY JOHNSON

BEFORE: PETTIGREW, McDONALD, AND McCLENDON, JJ.

PETTIGREW, J.

The defendant, Quroy Johnson, was charged by grand jury indictment with one count of aggravated rape, a violation of La. R.S. 14:42, and pled not guilty. He waived his right to a jury trial and, following a bench trial, was found guilty of the responsive offense of attempted aggravated rape, a violation of La. R.S. 14:27 and La. R.S. 14:42. He was sentenced to ten years at hard labor without the benefit of probation, parole, or suspension of sentence. He now appeals, contending the trial court erred in denying the motion for post verdict judgment of acquittal because the evidence was insufficient to support the conviction. For the following reasons, we affirm the conviction and sentence.

FACTS

The victim, J.M.,¹ testified her date of birth is November 22, 1995. On June 18, 2008, she was living in the Lincoln Park area of Hammond with her mother and her mother's boyfriend. While her mother was at work, J.M. went for a walk with her cousin, R.H.

While they were walking, J.M. and R.H. encountered the defendant and his brother, "Sean Ray."² The defendant was R.H.'s former boyfriend. One of the men asked R.H. for a hug, and she hugged both men. The men then asked J.M. for a hug and she also hugged them. One of the men asked if the girls would be "walking back around there to come back from [R.H.'s] house," and they replied affirmatively.

Thereafter, R.H. had the idea to go to the home of the men. She went into the home with the defendant, and then went into a room with him. J.M. testified she was "grabbed" by Sean Ray and went into another room with him. She indicated Sean Ray took his clothes off and started undressing her. She claimed she told him "No. I don't want to do this." Sean Ray then laid the victim down on the bed, kissed her on the neck, and pulled off her panties. Thereafter, he had vaginal intercourse with J.M.

¹ The victim is referenced herein only by her initials. See La. R.S. 46:1844(W).

² Police investigation indicated "Sean Ray" was Shelton Abram.

Subsequently, J.M. noticed she was bleeding when she got up to see what R.H. was doing. After she went into the bathroom to wipe off the blood, she returned to the room to put on her panties. Sean Ray, however, told her to "leave them off." According to J.M., the defendant then exited the room he had been in with R.H. and entered her room. J.M. tried to put on her panties, but the defendant "told [her] not to," and "laid [her] back down." She repeatedly told him, "No, I don't want to do it," but he held her legs and got on top of her. He put his penis in her, and she felt it "a little bit," pushed him off, and told him she was "ready to go." J.M. tried to leave with R.H., but she was "doing it" with Sean Ray. J.M. returned to the room and finished getting dressed. She subsequently left the house with R.H. Thereafter, J.M.'s mother "whipped her" with a belt because she thought J.M. had "went over there on [her] own."

J.M. testified she told her mother about what "Shelton" had done, but not about what the defendant had done. She stated she was scared, and "didn't know what to do or how to tell her or anybody else what happened." She indicated she told the doctor, but not her mother, what the defendant had done because "[J.M.] felt more comfortable talking to [the doctor] while [J.M.] was there at the moment at the time."

J.M.'s mother testified that on the day of the incident, she was working between Hammond and Loranger and left J.M. at a friend's house in Lincoln Park. Subsequently, she received a phone call that two boys had pulled her daughter and R.H. into a house in Lincoln Park and were "having sex" with them. J.M.'s mother "whipped her," and then questioned her about what had happened. J.M. told her Shelton Ray Abram had pulled her into a room, taken her clothes off, and "[tried] to have sex with her." J.M. did not make any allegations against the defendant.

Dr. Yameika Head was accepted by the trial court as an expert in forensic pediatrics. She treated J.M. on June 18, 2008. J.M. told Dr. Head that J.M. and R.H. had both been raped. Dr. Head asked J.M. to explain what she meant by "rape." J.M. indicated she had been "pulled into the house," forcibly taken into a room, and Sean Ray had put his penis in her vagina. She also indicated the defendant had held her down and put, or tried to put, his penis in her. J.M. had linear lacerations in her vagina, her hymen

was "very swollen," and her vaginal vault was bleeding. Dr. Head classified the findings as definitive for blunt penetrating trauma.

Hammond Police Department Sergeant Thomas Mushinsky investigated the incident. J.M. told Sergeant Mushinsky she had consensual sex with Shelton Abram, and R.H. had consensual sex with the defendant. J.M. did not allege the defendant had raped her until approximately one year later.

Sergeant Mushinsky also interviewed the defendant. The defendant admitted having sex with R.H., but claimed he was unaware of her age. He acknowledged that J.M. was with R.H., but did not state he had sex with J.M.

Lisa Ricci was a forensic DNA analyst at the time of the investigation of the incident. DNA analysis from the rape kit of R.H. indicated that "within a reasonable degree of scientific certainty," the defendant was the source of the DNA profiles from the sperm fractions. In regard to DNA testing from the rape kit of J.M., the defendant could not be excluded as a contributor to the mixture profile. Examining four loci, his combined probability of inclusion was 1 in 28 African Americans.

SUFFICIENCY OF THE EVIDENCE

In assignment of error number 1, the defendant argues the trial court erred in denying the motion for post verdict judgment of acquittal. In assignment of error number 2, he argues the evidence was insufficient to support the conviction. He combines the assignments of error for argument, contending the State failed to prove beyond a reasonable doubt that he engaged in any type of sexual conduct with J.M. because she did not give consistent accounts of the incident.

The standard of review for sufficiency of the evidence to uphold a conviction is whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could conclude the State proved the essential elements of the crime and the defendant's identity as the perpetrator of that crime beyond a reasonable doubt. In conducting this review, we also must be expressly mindful of Louisiana's circumstantial evidence test, which states in part, "assuming every fact to be proved that the evidence tends to prove," every reasonable hypothesis of innocence is excluded. **State v. Wright,**

98-0601, p. 2 (La. App. 1 Cir. 2/19/99), 730 So.2d 485, 486, writs denied, 99-0802 (La. 10/29/99), 748 So.2d 1157, 2000-0895 (La. 11/17/00), 773 So.2d 732 (quoting La. R.S. 15:438).

When a conviction is based on both direct and circumstantial evidence, the reviewing court must resolve any conflict in the direct evidence by viewing that evidence in the light most favorable to the prosecution. When the direct evidence is thus viewed, the facts established by the direct evidence and the facts reasonably inferred from the circumstantial evidence must be sufficient for a rational juror to conclude beyond a reasonable doubt that the defendant was guilty of every essential element of the crime.

Wright, 98-0601 at 3, 730 So.2d at 487.

Louisiana Revised Statutes 14:41, in pertinent part, provides:

A. Rape is the act of ... vaginal sexual intercourse with a ... female person committed without the person's lawful consent.

B. Emission is not necessary, and any sexual penetration, when the rape involves vaginal ... intercourse, however slight, is sufficient to complete the crime.

Louisiana Revised Statutes 14:42, in pertinent part, provides:

A. Aggravated rape is a rape committed ... where the ... vaginal sexual intercourse is deemed to be without lawful consent of the victim because it is committed under any one or more of the following circumstances:

....

(4) When the victim is under the age of thirteen years. Lack of knowledge of the victim's age shall not be a defense.

Any person who, having a specific intent to commit a crime, does or omits an act for the purpose of and tending directly toward the accomplishing of his object is guilty of an attempt to commit the offense intended; and it shall be immaterial whether, under the circumstances, he would have actually accomplished his purpose. La. R.S. 14:27(A). Specific criminal intent is that "state of mind which exists when the circumstances indicate that the offender actively desired the prescribed criminal consequences to follow his act or failure to act." La. R.S. 14:10(1). Though intent is a question of fact, it need not be proven as a fact. It may be inferred from the circumstances of the transaction. Specific

intent may be proven by direct evidence, such as statements by a defendant, or by inference from circumstantial evidence, such as a defendant's actions or facts depicting the circumstances. Specific intent is an ultimate legal conclusion to be resolved by the fact finder. **State v. Henderson**, 99-1945, p. 3 (La. App. 1 Cir. 6/23/00), 762 So.2d 747, 751, writ denied, 2000-2223 (La. 6/15/01), 793 So.2d 1235.

Any rational trier of fact, viewing the evidence presented in this case in the light most favorable to the State, could find the evidence proved beyond a reasonable doubt, and to the exclusion of every reasonable hypothesis of innocence, all of the elements of attempted aggravated rape and the defendant's identity as the perpetrator of that offense against the victim. The conviction indicates the trier of fact found J.M. credible and accepted her explanation for why she delayed naming the defendant as one of her attackers. This court will not assess the credibility of witnesses or reweigh the evidence to overturn a fact finder's determination of guilt. The testimony of the victim alone is sufficient to prove the elements of the offense. The trier of fact may accept or reject, in whole or in part, the testimony of any witness. Moreover, when there is conflicting testimony about factual matters, the resolution of which depends upon a determination of the credibility of the witnesses, the matter is one of the weight of the evidence, not its sufficiency. **State v. Lofton**, 96-1429, p. 5 (La. App. 1 Cir. 3/27/97), 691 So.2d 1365, 1368, writ denied, 97-1124 (La. 10/17/97), 701 So.2d 1331. Further, in reviewing the evidence, we cannot say that the fact finder's determination was irrational under the facts and circumstances presented. See **State v. Ordodi**, 2006-0207, pp. 14-15 (La. 11/29/06), 946 So.2d 654, 662. An appellate court errs by substituting its appreciation of the evidence and credibility of witnesses for that of the fact finder and thereby overturning a verdict on the basis of an exculpatory hypothesis of innocence presented to, and rationally rejected by, the fact finder. See **State v. Calloway**, 2007-2306, pp. 1-2 (La. 1/21/09), 1 So.3d 417, 418 (per curiam).

These assignments of error are without merit.

CONVICTION AND SENTENCE AFFIRMED.