

STATE OF LOUISIANA

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NO. 2001-KA-0536

VERSUS

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COURT OF APPEAL

FIDELIS OWUNTA

*

FOURTH CIRCUIT

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STATE OF LOUISIANA

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APPEAL FROM
CRIMINAL DISTRICT COURT ORLEANS PARISH
NO. 384-506, SECTION "I"

Honorable Raymond C. Bigelow, Judge

Judge Steven R. Plotkin

(Court composed of Chief Judge William H. Byrnes III, Judge Steven R. Plotkin, Judge Miriam G. Waltzer)

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AFFIRMED

The issue in this case is whether the evidence is insufficient to support the conviction for carnal knowledge of a juvenile. For the following reasons we affirm the defendant's conviction and sentence.

PROCEDURAL HISTORY

Fidelis Owunta, defendant-appellant, was charged by bill of information with five counts of carnal knowledge of a juvenile in violation of La. R.S. 14:80. A jury acquitted him on counts one, two, three and five, and found him guilty as charged on count four. He was sentenced to five years at hard labor, the sentence was suspended, and defendant was placed on three years active probation. The defendant appealed, and this Court affirmed his conviction and sentence. However, his petition for a writ of certiorari was granted, and the Louisiana Supreme Court reversed the decision, vacating the conviction and remanding the case for a new trial. State v. Owunta, 98-0006 (La. App. 4 Cir. 3/31/99), 734 So. 2d 57, rev'd, 1999-1569 (La. 5/26/00), 761 So. 2d 528. On August 21, 2000 a six-person

jury found the defendant guilty as charged. He was sentenced to five years at hard labor; the sentence was suspended, and the defendant was placed on three years of active probation.

STATEMENT OF FACTS

At trial, the victim, who was fourteen years old at the time of the incident, testified that she was living with her mother, sister and brother. The victim was a freshman at St. Mary's Academy, and the defendant was her math teacher. She claimed to be in honors math class. The defendant became a family friend after the victim's mother realized that he taught her at SUNO and taught her daughter at St. Mary's, and Owunta came over to her house several times.

In February of 1996, the victim's brother was marching in the Endymion parade, and the victim's family all attended. Because the victim did not like parades, she stayed at home. Earlier that day the defendant had spoken with the victim's mother on the telephone, and she had told him that everyone but the victim was going out. When the family was gone, the defendant appeared at the house and knocked on the door. The victim opened the heavy door, but kept the screen door latched. The defendant was

crying, and she allowed him to come in. She had been watching television, and they went into the den where the TV was playing. She walked into her bedroom to get something, and he followed her. She described him as having an “evil smirk on his face.” The victim related the sequence of actions as follows:

I had on my PJs. And my bed was right there and he kind of like pushed me down, climbed on top of me and he took off his shoes, his pants [sic] and he pulled down my PJs

He straddled my legs open, he inserted his penis . . . Then as he laid [sic] on top of me I just stayed still because it was like the more I tried to move the more he would hurt me. And he—as he ejaculated . . . he had a towel and he took the towel . . . and he had ejaculated into the towel.

When the telephone rang the victim’s neighbor, who recognized the defendant’s car and knew that the rest of the family was out, told the victim to make him leave the house. The victim did so and called a help line sometime later. Then she told her seventeen-year-old brother, who told her to stay away from the defendant. As summer approached, the defendant suggested to the victim’s mother that the victim work for him in the computer lab during the summer. The victim and her brother decided to confront the defendant. The victim called him and told him to come over to

the house. He came to her house to speak with her, and her brother, who took part in the conversation, secretly taped their words. The tape was played for the jury. The victim denied trying to blackmail the defendant and stated that the purpose of the tape was to back up her story when she told her mother what the defendant had done. The victim told her mother about the February incident several days after the taping, and her mother listened to the tape until she heard the defendant saying he planned to marry the victim. Then her mother started crying and turned the tape off. Her mother called a crisis line and was told what to do. Under cross-examination, the victim was asked if the defendant had any unusual markings she could describe to prove she had sex with him, and she answered that he had a birthmark on his lower body where his skin was light. The victim was called in rebuttal, and she testified that she was second track math in the ninth grade and did not need tutoring.

Ms. Angela Delaney testified that in 1996 the victim's family was her neighbor. Ms. Delaney met the defendant at their house and once discussed having him tutor her son. On the day of the Endymion parade, the victim's mother asked Ms. Delaney for help because she "did not want him [the

defendant] in the house.” The victim’s mother explained that she had “a funny feeling” and asked Ms. Delaney to watch her house. When Ms. Delaney saw the defendant’s Mitsubishi parked there, she called the victim and told her to ask the defendant to leave. Under cross-examination, Ms. Delaney said she knew that the victim’s mother did not want anyone in the house when she was not there, and that rule was not specifically for the defendant.

The victim’s brother, who was seventeen in 1996, testified that his sister came to him crying and told him the defendant had sex with her. He first told her not to let it happen again. Then in order to get evidence against the defendant, he devised a plot to confront him and tape the conversation. The brother said he never listened to the tape after making it. He also stated that he never tried to blackmail the defendant, and he had no weapons during the conversation. Afterward the brother never spoke to the defendant again although the defendant called the house. When asked what he meant on the tape when he told his sister, “I’m getting you want [sic] you want,” he said that he expected the defendant to “throw his money in our face” to bribe them to be quiet, and he was getting evidence on the tape to prove his sister’s case. The brother said he never spoke with Mark Fortier, his barber, about the tape.

When Mark Fortier testified he was serving time in Orleans Parish Prison on a possession of cocaine conviction. He admitted he had prior convictions for forgery and theft. Fortier began dating the victim's sister who told him about her family. Fortier called the brother and warned him against blackmailing the defendant because Fortier did not want the brother to get into trouble. The brother answered that he knew what he was doing.

Cassandra and Pamela Owunta, the defendant's sixteen and fourteen-year-old daughters, testified that their father has taken them to the Endymion parade every year, and he did so in 1996. Fidelis Owunta testified that he is married, although at the time of trial his wife was an out-of-state student, and he is also the father of five children ranging in age from a college student to a third grader. Originally from Nigeria, he received a scholarship to study at Dillard University. After receiving his degree, he did graduate studies at UNO and is presently a doctoral student at Southern University. While he worked at St. Mary's Academy and Southern University teaching math, he taught both the victim and her mother. He said the victim was in "third track" or the bottom track of math, and her mother wanted her tutored. He went to her house on about six occasions to tutor the victim in the presence of her mother. He denied having sexual relations with the victim and maintained that he took his entire family to the Endymion parade in

1996.

The defendant claims that on the day he met with the victim and her brother the victim had called him and pleaded with him to come to her house immediately. When Owunta arrived, the victim's brother was there and he thought someone else was in the house although he knew it was not her mother because he had just seen her on the SUNO campus. The defendant asked the brother about his recent auto accident in which the family car had been wrecked. Owunta was "totally flabbergasted" when the victim accused him of having sex with her. Then her brother said he had made a video tape of the defendant and his sister. Owunta said he was "afraid for his life" because the brother was near the kitchen where knives were on the counter. Owunta promised to get them a car and a house even though he knew he could not do so. He explained that he said on the tape that he wanted to marry the victim because he had known that she had a crush on him, and he was trying to placate her. He admitted that he was crying on the tape not because he was guilty but for the shame these accusations would bring to his family. The brother called him after that day and asked about the car which was to be in the brother's name. Owunta was arrested two weeks after his meeting with the victim and her brother. As to the discoloration on the defendant's body described by the victim, there was a stipulation by the

parties that the defendant had a small scar measuring about an inch and one-half on one hip but the skin is not discolored.

ERRORS PATENT

A review of the record reveals no errors patent.

ASSIGNMENT OF ERROR NO. 1

In a single assignment of error, the defendant contends the State failed to present sufficient evidence to sustain his conviction for carnal knowledge of a juvenile.

When assessing the sufficiency of evidence to support a conviction, the appellate court must determine whether, viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found proof beyond a reasonable doubt of each of the essential elements of the crime charged. Jackson v. Virginia, 443 U.S. 307, 99 S.Ct. 2781 (1979); State v. Jacobs, 504 So. 2d 817 (La. 1987).

In addition, when circumstantial evidence forms the basis of the conviction, such evidence must consist of proof of collateral facts and circumstances from which the existence of the main fact may be inferred according to reason and common experience. State v. Shapiro, 431 So. 2d 372 (La. 1982). The elements must be proven such that every reasonable hypothesis of innocence is excluded. La. R.S. 15:438. This statute is not a

separate test from Jackson v. Virginia but rather is an evidentiary guideline to facilitate appellate review of whether a rational juror could have found a defendant guilty beyond a reasonable doubt. State v. Wright, 445 So. 2d 1198 (La. 1984). All evidence, direct and circumstantial, must meet the Jackson reasonable doubt standard. State v. Shapiro, 431 So. 2d 372 (La. 1982).

La. R.S. 14:80 provides that “carnal knowledge of a juvenile is committed when . . . [a] person over the age of seventeen has sexual intercourse, with consent, with any person of the age of twelve years or more, but under the age of seventeen years, when there is an age difference of greater than two years between the two persons and the victim is not the spouse of the offender.” The defendant argues the evidence is insufficient to support the conviction. He maintains that he is the real victim in this case, and the so-called victim’s testimony is not based on any physical evidence or backed up by other testimony and is simply incredible.

We find defendant’s argument is without merit. First, the victim testified that she was fourteen in the spring of 1996 when she had sexual intercourse with the defendant who was then approximately forty-three. The victim testified that the defendant came to her house while her family was out watching a parade. A neighbor, Ms. Angela Delaney, testified that she

recognized the defendant's car parked at the victim's house after the family had gone out, and she telephoned the victim warning her that she must tell the defendant to leave. Furthermore, the audio tape made by the victim and her brother, which the defendant maintains shows an intent to extort money from him, actually reveals the defendant admitting the charge, trying to justify his behavior, and attempting to buy out his accusers. Although he claims not to understand the accusations initially, he then speaks of planning to marry the victim and caring for her and next asks that they work something out. He suggests getting the family a car. The defendant does not sound surprised by the accusations and remains relatively calm during the conversation. At one point on the tape he says, "I'm sorry for what I did."

The jury after hearing all the evidence chose to believe the victim's testimony. It is the jury's function to make credibility determinations, and this court will not second-guess its decision. State v. Smith, 600 So. 2d 1319 (La. 1992); State v. Washington, 99-1111 (La. App. 4 Cir. 3/21/01), 788 So. 2d 477.

CONCLUSION

Accordingly, for reasons stated above, the defendant's conviction and sentence are affirmed.

AFFIRMED

