

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

David Leroy Lutz,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 25, 2022

Court of Appeals Case No.
21A-CR-1661

Appeal from the Henry Circuit
Court

The Hon. Kit C. Dean Crane,
Judge

Trial Court Cause No.
33C02-1810-F1-3

Bradford, Chief Judge.

Case Summary

- [1] In September of 2018, David Lutz and K.T. were dating. One evening, the two had an argument, and, the next morning, Lutz partially removed K.T.'s clothing as she slept and tried to force his penis between her buttocks. When Lutz was driving K.T. home, he began punching her, and they returned to his house. There, Lutz forced K.T. to disrobe, bound her hands, made various threats of violence, and forcibly penetrated her anus with his penis, all while armed with a pickaxe. The State charged Lutz with, *inter alia*, Level 1 felony rape, and, following a jury trial, Lutz was convicted of that charge and several others and found to be a repeat sexual offender. The trial court imposed an aggregate sentence of sixty-six years of incarceration. Lutz contends that the State produced insufficient evidence to sustain his rape conviction. Because we disagree, we affirm.

Facts and Procedural History

- [2] On the night of September 12, 2018, K.T. and Lutz, who were dating at the time, were at Lutz's house in Henry County, where they planned to drink some beer and "move some things around[.]" Tr. Vol. II p. 178. Several other persons, including Lutz's brother and nephew, arrived at approximately 7:30 or 8:00 p.m. After Lutz's brother left with Lutz's nephew, Lutz began yelling at K.T., accusing her of having flirted with his nephew. K.T. decided to return to her home, and asked Lutz's roommate David French to take her. While French was driving K.T. home, Lutz repeatedly called and texted her to apologize, which apology she accepted. French returned with K.T. to Lutz's

house. When K.T. arrived, she and Lutz sat by a bonfire and drank beer until she went inside and fell asleep.

[3] Early the next morning, Lutz entered the bedroom, moved a security camera so that it captured the sleeping K.T., and began to unclothe her, pushing her pants partially down her legs and pushing her shirt and sweatshirt up. K.T. woke up when Lutz began to reach between her legs, and she believed that he had also been trying to put his penis between her buttocks. Lutz began yelling at K.T., and she again asked French to take her home. Lutz, however, would not allow French to take K.T. home, telling her that he would take her home instead.

[4] As Lutz was driving K.T. home, he hit her “as hard as he could” in the face with his right fist. Tr. Vol. II p. 198. As Lutz continued to hit K.T., she fought back, managed to call her mother and 911, put the truck into park, jump out, and start running. Lutz caught up with K.T., grabbed her by the hair, threw her down, dragged her through a ditch, threw her back into the truck, and told her that he would kill her if she got out again.

[5] Lutz and K.T. returned to Lutz’s property, where he drove her to “kind of like a swampy area” near the back of his property instead of to the house while telling her that he was going to sell and kill her. Tr. Vol. II p. 201. Lutz told K.T. to remove her clothing and bound her hands after she was done. Lutz also told K.T. that (1) she did not want to end up like Denise Pflum, an area woman who had had disappeared years before and had never been found and (2) he would ask her a series of questions and would cut off one of her fingers with a pickaxe he was holding for every wrong answer. Lutz turned K.T. around,

shoved her in the back of the truck, and “sodomized” her. Tr. Vol. II p. 218.

The following exchange occurred during K.T.’s direct examination at trial:

Q Okay. When you say that he turned you [around] and shoved you down in the back of the truck, where were you sitting? Were you all the way in the back of the truck?

A Yeah. My head -- my body was -- like, this part of my body and my head, and then he was, like, on top -- had me on top of that thing that loaded down, and he was behind me. And he put my head down like that and said, “Shut up, shut up. Quit screaming, quit screaming.” And I was screaming as hard as I could scream.

Q And when you said he sodomized you, what do you mean?

A He put his d[***] in my butt. It hurt me [indiscernible] -- and it hurt --

Q He --

A -- so bad. And he did it hard. [Indiscernible] --

Q He put your -- his penis in your anus?

A Yes, ma’am.

Q Was he wearing a condom?

A No.

Q Did he ejaculate?

A Yes.

Q Where did he ejaculate?

A In my anus. And the during the time, he kept hitting me and things, and it was just -- I couldn’t take no more.

Tr. Vol. II pp. 218–19 (second and third sets of brackets in transcript). K.T.

acted as though she was “okay with everything” long enough to create an opportunity to leave and seek help. Tr. Vol. II p. 230.

[6] On October 31, 2018, the State charged Lutz with Level 1 felony rape, Level 5 felony criminal confinement, Level 6 felony battery, Level 5 felony intimidation, and Class A misdemeanor interference with the reporting of a crime. The State later added charges including Level 6 felony sexual battery and Level 3 felony criminal confinement and allegations that Lutz was a habitual offender and a repeat sexual offender. Following Lutz’s trial, which began on June 7, 2021, a jury found him guilty of Level 1 felony rape, Level 5 felony criminal confinement, Level 6 felony battery, Level 5 felony intimidation, Level 6 felony sexual battery, and Level 3 felony criminal confinement. After the second phase of trial, the jury found Lutz to be a repeat sexual offender. On July 7, 2021, the trial court sentenced Lutz to an aggregate term of sixty-six years of incarceration.

Discussion and Decision

[7] Lutz contends that the State failed to produce sufficient evidence to sustain his conviction for Level 1 felony rape. When a defendant challenges the sufficiency of the evidence used to convict him of a crime, we consider only the probative evidence and reasonable inferences arising therefrom supporting the conviction. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We will affirm a conviction unless no reasonable factfinder could find the elements of the crime proven beyond a reasonable doubt. *Young v. State*, 973 N.E.2d 1225, 1226 (Ind. Ct. App. 2012), *trans. denied*. Put another way, reversal of a defendant’s conviction “is appropriate only when a reasonable trier of fact would not be able to form inferences as to each material element of the offense.” *Purvis v.*

State, 87 N.E.3d 1119, 1124 (Ind. Ct. App. 2017), *aff'd on reh'g*, 2018 WL 522813 (memorandum decision on rehearing). This standard of review does not permit us to reweigh the evidence or allow us to judge the credibility of the witnesses. *McCallister v. State*, 91 N.E.3d 554, 558 (Ind. 2018). Where there is conflicting evidence in the record, we consider the evidence in the light most favorable to the judgment. *Drane*, 867 N.E.2d at 146.

- [8] The only conviction Lutz challenges is his conviction for Level 1 felony rape. In order to convict Lutz of that crime, the State was required to produce sufficient evidence to establish that “he [...] knowingly or intentionally cause[d] [K.T.] to perform or submit to [...] the penetration of [her] anus [...] by an object [when] compelled by force or imminent threat of force [...] while armed with a deadly weapon[.]” Ind. Code §§ 35-42-4-1; 35-31.5-2-221.5.
- [9] Lutz first claims that the State failed to establish that his penis penetrated K.T.’s anus. We disagree. K.T. specifically testified that Lutz “sodomized” her, that “he put his d[***] in her butt[.]” and that he ejaculated “[i]n [her] anus.” Tr. Vol. II pp. 218–19. K.T. also responded in the affirmative when asked if he had “put [...] his penis in [her] anus[.]” Tr. Vol. II pp. 219. K.T. also testified that “[i]t hurt me [indiscernible] -- and it hurt -- [...] -- so bad. And he did it hard[.]” which supports a reasonable inference that penetration occurred. Tr. Vol. II p. 219. Finally, K.T. reported during her sexual assault-examination that Lutz had put his penis in her anus and that she was experiencing rectal pain. We agree with Lutz that buttocks and the anus are not the same thing and that mere contact with the buttocks is insufficient to support a rape conviction. *See, e.g.*,

Downey v. State, 726 N.E.2d 794, 798 (Ind. Ct. App. 2000) (concluding that testimony that the defendant rubbed his penis between the victim’s “butt cheeks” but did not touch the witness’s anus was insufficient to show contact between the defendant’s sex organ and the victim’s anus), *trans. denied*. The evidence produced at Lutz’s trial, however, easily supports a finding that anal penetration occurred.

[10] Lutz also claims that K.T.’s behavior following the incident was inconsistent with that of a woman who had just been raped. Lutz points to K.T.’s testimony that, after they returned to his bedroom, she hugged and kissed him, attempted to wake him up when he fell asleep, and told him that she wanted to take a shower. K.T., however, also testified that she had feigned this seemingly-friendly behavior because she had been worried about further attacks and had wished to put Lutz at ease so that she could escape. The jury was free to weigh this evidence and conclude that K.T.’s actions were indeed intended to prevent further attacks and generate an opportunity for escape. We will not second-guess that conclusion. Lutz’s arguments are nothing more than invitations to reweigh the evidence, which we will not do. *See McCallister*, 91 N.E.3d at 558.

[11] We affirm the judgment of the trial court.

Crone, J., and Tavitas, J., concur.