MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Jhanika R. Nance,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

January 30, 2024

Court of Appeals Case No. 23A-CR-2180

Appeal from the Madison Circuit Court

The Honorable Angela G. Warner Sims, Judge

Trial Court Cause No. 48C01-2010-F3-2451

Memorandum Decision by Judge Brown
Judges Riley and Foley concur.

Brown, Judge.

[1] Jhanika R. Nance appeals her conviction for rape as a level 3 felony and asserts the evidence is insufficient to sustain the conviction. We affirm.

Facts and Procedural History

[2] In October of 2020, B.R. was arrested for a probation violation and placed in a cell at the Madison County Jail. Later, Nance was placed in the same cell. Nance told B.R. that she was bisexual, was bored, and "wanted a snack." Transcript Volume II at 62. B.R. did not know what Nance meant at first. Nance said "[t]hat she wanted to lick pu---." *Id.* B.R. also heard Nance make comments to other inmates. Nance watched others in the shower and commented on their bodies. At some point while B.R. was on the top bunk in her cell, Nance picked her up and placed her on the bottom bunk. Nance started to pull B.R.'s pants off, and B.R. said "[s]top" and "[n]o, stop, [Nance]," and tried to pull her pants back up. *Id.* at 65. B.R. said "[s]top, I don't want to." *Id.* at 66. Nance became "rough." *Id.* at 67. B.R. continued to tell Nance to stop. Nance removed B.R.'s pants and underwear, pulled B.R.'s legs open, placed her fingers "inside" her vagina, and "start[ed] using her tongue . . . [t]o lick [her] vagina." *Id.* at 69. At two additional times in a period of about six days, Nance "used her tongue" on B.R.'s vagina. *Id.* at 73. B.R. was worried about reporting the incidents, afraid that Nance would not be moved and that she would have to stay with her, and afraid of what Nance would do. B.R. could tell that Nance liked another inmate, E.R., and made comments about her, and she observed Nance grab E.R.'s breasts. B.R. told another inmate, T., what occurred. Nance was removed from B.R.'s cell. B.R.

was taken to the hospital, and Holly Renz, a registered nurse, examined B.R. and noted bruising on her legs and tenderness.

[3] On October 27, 2020, the State charged Nance with: Count I, rape of B.R. as a level 3 felony; Count II, rape of B.R. as a level 3 felony; and Count III, sexual battery of E.R. as a level 6 felony.[1] In April 2023, the court held a bench trial. The State dismissed Count II. The court heard testimony from B.R., E.R., and Nurse Renz and admitted photographs of B.R.'s bruises. B.R. testified to the above. She testified that Nance stated that she "wanted a snack," she did not know what that meant at first, and Nance said "she wanted to lick pu---," the prosecutor asked "[s]o, perform oral sex," and B.R. answered affirmatively. *Id.* at 62. She testified that Nance picked her up and placed her on the bottom bunk, and when asked if she was concerned at that point, she replied "[a]t first I thought she was messing around until she grabbed me." *Id.* at 65. B.R. testified she told Nance to stop, and Nance "had that smile on her face . . . like it was a game or something . . . . But rough-like." *Id.* at 66-67. When asked if it became "rough at that point," she replied affirmatively. *Id.* at 67. When asked if she continued to tell Nance to stop, B.R. answered affirmatively, and when asked "[d]id you continue to try to fight her off," B.R. replied: "Yes, then,

[1] Count I alleged that, "[o]n or between October 12, 2020 and October 18, 2020, . . . Nance did knowingly or intentionally cause [B.R.] to perform or submit to other sexual conduct when [B.R.] was compelled by force or imminent threat of force." Appellant's Appendix Volume II at 11. Count II alleged that Nance knowingly or intentionally had sexual intercourse with B.R. Count III alleged that Nance, "with intent to arouse or satisfy his/her own sexual desires or those of another person, did touch [E.R.] when he/she was compelled to submit to the touching by force or imminent threat of force." *Id.* at 12.

then I stopped." *Id*. She testified she was "[t]rying to keep [her legs] closed." *Id*. She indicated that she was 5'2" and that Nance was "considerably bigger than [her]." *Id*. at 69. She indicated that, after the assault, she stayed under the covers and that she was with Nance twenty-three hours a day. When asked "how many times that first time did you ask her not to do it," B.R. answered "[a] lot," when asked "were you frightened of her," she replied affirmatively, and when asked "the first time you were forced, correct," she responded "[y]es." *Id*. at 83-84.

[4] E.R. testified that Nance made sexual comments directed at her, told her that she would like to touch her breasts, watched her in the shower, and touched her breast. When asked "would you be out on your hour showering . . . did you see anything unusual going on in" B.R.'s cell, E.R. replied affirmatively, and when asked "[w]hat," she replied: "Just, she was touching B.R. and I know B.R. was uncomfortable." *Id*. at 94. E.R. further testified that she observed B.R. during the week they were in the jail together, B.R. seemed scared when she was around Nance, her eyes were red "like she was crying," and she was "just shaky." *Id*. at 98. E.R. testified that B.R. was sitting on top of her bunk covered up most of the time.

[5] Nurse Renz testified regarding her examination of B.R. and observations of B.R.'s bruising. When asked "did the location of the bruises on the thigh, were those consistent with what [B.R.] told you happened," she answered: "It would be consistent with um, attempted to um, place your hands on their thigh in order to um, orally penetrate the victim." *Id*. at 141.

[6] At one point during closing argument, the prosecutor stated: "[B.R.] said that eventually she gave up because she was five foot two (5' 2"), a small in stature person up against [Nance], who you can see as she sits here today [] is much taller, much larger, much stronger [] than . . . B.R. would've possibly been." *Id.* at 149. The court found Nance guilty of Counts I and III.

Discussion

[7] When reviewing the sufficiency of the evidence to support a conviction, we consider only the probative evidence and reasonable inferences supporting the verdict. *Drane v. State*, 867 N.E.2d 144, 146 (Ind. 2007). We do not assess witness credibility or reweigh the evidence. *Id.* We consider conflicting evidence most favorably to the trial court's ruling. *Id.* We affirm the conviction unless no reasonable fact-finder could find the elements of the crime proven beyond a reasonable doubt. *Id.* A conviction may be sustained on the uncorroborated testimony of a single witness or victim. *Baltimore v. State*, 878 N.E.2d 253, 258 (Ind. Ct. App. 2007), *trans. denied*.

[8] Nance asserts the evidence is insufficient to sustain her conviction for rape.[2] She "does not deny that she performed oral sex upon [B.R.] during the time detailed in the charging information" but argues the State did not "prov[e] beyond a reasonable doubt that [B.R.] was compelled by force or imminent threat of force." Appellant's Brief at 8. She points to the prosecutor's closing

[2] Nance does not challenge her conviction for sexual battery.

argument and contends "[s]uggesting that because someone is larger in stature hardly meets the threshold of using force to commit such a horrendous crime." *Id*. She argues "there is nothing in the record that supports any implication imposed by Nance of what would happen to [B.R.] had she not complied." *Id*. at 10. The State maintains the evidence showed the sexual encounter was compelled by force. It also argues that "B.R. was asked about Nance's larger stature only to illuminate why her attempts to resist Nance were not successful." Appellee's Brief at 10.

[9] At the time of the offense, Ind. Code § 35-42-4-1(a) provided that "a person who . . . knowingly or intentionally causes another person to perform or submit to other sexual conduct (as defined in IC 35-31.5-2-221.5) when: (1) the other person is compelled by force or imminent threat of force . . . commits rape, a Level 3 felony."[3] "Other sexual conduct" means "an act involving: (1) a sex organ of one (1) person and the mouth or anus of another person; or (2) the penetration of the sex organ or anus of a person by an object." Ind. Code § 35-31.5-2-221.5. The Indiana Supreme Court has held that whether force or the threat of force was used "is a subjective test that looks to the victim's perception of the circumstances surrounding the incident in question. The issue is thus whether the victim perceived the aggressor's force or imminent threat of force as compelling her compliance." *Tobias v. State*, 666 N.E.2d 68, 72 (Ind. 1996).

[3] Subsequently amended by Pub. Law No. 78-2022, § 8 (eff. July 1, 2022); Pub. Law No. 92-2022, §1 (eff. July 1, 2022); and Pub. Law No. 105-2022, § 27 (eff. July 1, 2022).

"[T]he force necessary to sustain a rape conviction need not be physical, but . . . may be inferred from the circumstances." *Bryant v. State*, 644 N.E.2d 859, 860 (Ind. 1994).

[10] The record reveals that Nance placed B.R. on the bottom bunk in their cell, removed her pants and underwear, inserted her fingers in B.R.'s vagina, and "us[ed] her tongue . . . [t]o lick [B.R.'s] vagina." Transcript Volume II at 69. B.R. testified that she repeatedly told Nance to stop and tried to pull her pants back up, to "fight her off," and to "keep [her legs] closed" and that Nance became rough and pulled her legs apart. *Id*. at 67. B.R. testified that she asked Nance "not to do it" "[a] lot," that she was "forced," and that she was frightened of her. *Id*. at 83-84. B.R. testified Nance "used her tongue" on her vagina two other times. *Id*. at 73. E.R. testified that B.R. appeared to be scared around Nance and that she saw B.R. shaking, and the court admitted evidence of B.R.'s bruising. Based upon the record, we conclude that evidence of probative value was presented from which the trial court as the trier of fact could find beyond a reasonable doubt that Nance committed rape as a level 3 felony.

[11] For the foregoing reasons, we affirm.

[12] Affirmed.

Riley, J., and Foley, J., concur.