Circuit Court for Baltimore County
Case C-03-CR-19-000062

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0243

September Term, 2021

STEVEN GRAVLEY

v.

STATE OF MARYLAND

Beachley,
Shaw,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: July 11, 2022

This appeal arises from a sexual encounter between Steven Gravley and K.L. and his conviction for second-degree assault. Mr. Gravley was charged with first-degree rape, second-degree rape, first-degree assault, second-degree assault, first-degree burglary, theft, and wearing and carrying a dangerous weapon. The Circuit Court for Baltimore County granted motions for acquittal in regard to the burglary and theft counts, and, after a bench trial, acquitted Mr. Gravley of all other charges except second-degree assault.

He presents two questions, which we have slightly modified, for our review:

I. Did the trial court err in denying [his] motion to admit evidence of the complaining witness's communications regarding other commercial sexual encounters?
II. Did the trial court err in convicting [him] of second-degree assault where it acquitted him of all remaining charges after finding that the complaining witness was not credible?

FACTUAL AND PROCEDURAL BACKGROUND

Prior to their encounter, K.L posted an offer of sexual services in exchange for money on the "adultsearch.com" website. After receiving messages from multiple people, K.L. agreed to meet with Mr. Gravley for $150. They had not agreed on the services to be provided, but she assumed it was for sexual intercourse.

When Mr. Gravley arrived at K.L.'s hotel room, he knocked on the door, and she let him in. She testified that she noticed the outline of a gun in his waistband when she opened the door. After entering the room and pacing back and forth for a minute or two, Mr. Gravley pulled out the gun and pointed it at her. After telling her that "his homeboy said [K.L.] set him up," he showed her a text message allegedly from his "homeboy" saying

that K.L. had set him up, and telling him to "kill shorty,"[1] which K.L. understood to be her. K.L. repeatedly told him that she did not set anyone up and that he could take anything in the room, including money and her phone. After responding that that was not what he wanted, he told her to take her clothes off. According to K.L., she took her clothes off "[b]ecause he had a gun and I was scared, and he was big, so." Mr. Gravley ordered her to put a condom on him and then he "got on top of [her] and raped [her]," leaving the gun close to him on the other bed in the room when he did.

When the alleged rape was over, K.L., hearing housekeeping in the hallway, immediately ran out of the room wearing only her bra and socks. She asked people to call the police, and when she saw her boyfriend, she told him not to confront Mr. Gravley because he had a gun.

A man in the hotel called the police and K.L. waited for them to arrive. She testified that she was scared at first to tell the police about her prostitution because she thought the police would not believe her and was afraid that she would "get in trouble." After she was taken to the Greater Baltimore Medical Center for a rape kit examination, she met with two special victim detectives. She told them about the online advertisement and what happened.

[1] "Shorty" is a slang term typically used to refer to "a female" or "a person." The Online Slang Dictionary, http://onlineslangdictionary.com/meaning-definition-of/shorty (last visited June 28, 2022).

At trial, K.L., when asked if she received any money from Mr. Gravley the day of the incident, responded that she did not. He did, however, send money via Cash App about a year after the incident. And when asked if they had agreed on a fee of $150, K.L. responded "$150, and if that would have got paid, we wouldn't be here today."

Officer Jerrell Eaton testified that he responded to the 911 call. When he arrived at the hotel, he saw K.L. crying on the steps talking with another officer. He testified that K.L. "was very shaken up, crying, her hands were shaking, and when she tried to talk to me, it was just overwhelmed by crying. She would stop and had to get herself together to continue to talk to me."

K.L. described Mr. Gravley to Officer Eaton as approximately "5'8", 250 to 300 pounds, dark-skinned, heavy build, bald head, mustache. She said that he was wearing a black leather jacket, black shirt, blue jeans, dark colored shoes [and had] a black handgun." A person who called 911 also informed the police that the person was Black, short, bald, drove a blue BMW, was wearing a leather coat, and that the BMW drove "up towards Milford Mills, like going towards Reisterstown north."

Officer Sisto Vetere testified that he received a radio report regarding a woman screaming about a man having a gun, along with a description of the suspect and the car he was driving. While responding to that report, he spotted a blue BMW matching the description of the car. When he approached the car to get a better look, it started making abrupt turns. He followed the car and exited his patrol vehicle after the driver, who he later learned was Mr. Gravley, parked and exited the car. The driver matched the description

that he had been given of the suspect: an approximately 5'8", heavyset, bald, Black male with a leather jacket on. When Officer Vetere arrested him, Mr. Gravley asked: "Is this about the hotel?" Once Mr. Gravley was in handcuffs, Officer Vetere approached the BMW and saw, in plain view, the handle or the butt of what appeared to be a handgun wedged between the driver's seat and the center console. Other officers on the scene removed it from the car and discovered it to be a BB gun.

At the beginning of the trial, the court addressed several motions. Relevant to this appeal is Mr. Gravley's motion under an exception to the Rape Shield Statute to admit evidence of K.L.'s communications on the morning of the incident with other potential customers to support his "claim that the victim has an ulterior motive to accuse the defendant of the crime." Md. Code Ann. Crim. Law § 3–319(b)(4)(iii). More specifically, he wanted to show that the prices she had quoted others were less than the $150 that Mr. Gravley had agreed to pay. The State argued that what K.L. would have charged other potential customers was not relevant to what had happened in the hotel room with Mr. Gravley. The court found that "the evidence sought to be introduced" was insufficient to support "a claim that the victim has an ulterior motive to accuse [Mr. Gravley] of the crime."

At the end of the evidentiary portion of the trial, the court granted Mr. Gravley's motion of acquittal to the charges of first-degree burglary and theft of U.S. currency. And, after arguments by counsel, the court acquitted Mr. Gravley of all the remaining charges except second-degree assault.

ANALYSIS

I. The Rape Shield Statute and the Admissibility of Evidence Related to Other Possible Sexual Encounters

Standard of Review

Admissibility of evidence pertaining to a victim's past sexual conduct is reviewed under an abuse of discretion standard. *White v. State*, 324 Md. 626, 637 (1991). "A trial court abuses its discretion only when no reasonable person would take the view adopted by the trial court, or when the court acts without reference to any guiding principles." *Barker v. State*, 223 Md. App. 750, 759 (2015).

Contentions

Mr. Gravley contends that the court erred or abused its discretion when it did not allow him to present evidence of K.L.'s communications with others seeking her sexual services that day to support his claim that she has a motive to accuse him of rape. He argues that the evidence tended to show that her "motive was money," and that he needed that evidence "in order to put the unique nature of their agreement into context and establish that the $150 that they had agreed upon exceeded [K.L.'s] normal rate for sex." Coupled with Mr. Gravley's failure to pay her that day, the evidence would "establish that she harbored [an] ulterior motive to accuse [Mr. Gravley] of rape."

The State contends that "[Mr.] Gravley has not identified . . . any theory of relevance on which [K.L.'s] unconfirmed price quotes could show that [she] had a motive to fabricate a rape allegation against him, other than claiming (as [Mr.] Gravley does) that [K.L.] was

predisposed to lying because she engaged in prostitution." It argues that K.L.'s prostitution was not in dispute, and that it did not object to the introduction of evidence of her "agreement for paid sex with" Mr. Gravley.

Discussion

The relevant provisions of the Rape Shield statute state:

> (b) *Specific instance evidence admissibility requirements.* – Evidence of a specific instance of a victim's prior sexual conduct may be admitted in a prosecution described in subsection (a) of this section only if the judge finds that: (1) the evidence is relevant; (2) the evidence is material to a fact in issue in the case; (3) the inflammatory or prejudicial nature of the evidence does not outweigh its probative value; and (4) the evidence:
>
> (i) is of the victim's past sexual conduct with the defendant;
>
> (ii) is of a specific instance of sexual activity showing the course or origin of semen, pregnancy, disease, or trauma;
>
> *(iii) supports a claim that the victim has an ulterior motive to accuse the defendant of the crime*; or
>
> (iv) is offered for impeachment after the prosecutor has put the prior sexual conduct in issue.

Md. Code Ann., Crim. Law. Art., § 3–319 (emphasis added). As indicated, romanette (iii) is at issue in this case.

Mr. Gravley looks to *Johnson v. State*, 332 Md. 456 (1993), to support his argument that the exclusion of evidence pertaining to K.L.'s price quotes to others was erroneous. In that case, the victim testified that she had been raped "while she was attempting to make yet another purchase of cocaine, with funds from a friend." *Id.* at 459. The defendant asserted that the sexual relations were consensual. He argued that the victim was exchanging sex for drugs, and only accused him of rape because she was not given drugs

after sex. *Id.* at 459. To support his argument, he wanted to introduce evidence of the victim exchanging sex for drugs in the very recent past. *Id.* In an in camera hearing, the victim testified that she had been trading sex for drugs for the preceding six months, and that she had done so as recently as one week prior to the alleged rape. *Id.* She denied, however, trading sex for drugs with the defendant on that particular occasion or having had sexual relations with him at any time previously. The trial court denied introduction of the evidence. *Id.* at 460.

The Court of Appeals reversed, concluding that the victim's admission of her addiction and having exchanged sex for drugs within a week of the alleged rape was relevant to whether she was doing so on the subject occasion and whether not receiving the anticipated drugs had led to a false rape accusation. As Mr. Gravley states in his brief, the Court in *Johnson* reasoned that the sexual conduct evidence "was necessary for petitioner to establish the basis of the bargain in order to support his defense that he was falsely accused."

This case and *Johnson* differ. The only evidence excluded was K.L.'s price quotes for her services to others. She freely admitted that she was engaging in prostitution when she agreed to meet Mr. Gravley, and more specifically, that her understanding of the bargain was that in exchange for sexual intercourse with her, he would pay her $150. The defense was free to argue that she was accusing Mr. Gravley of rape only because he did not pay her the agreed-upon fee.

We are not persuaded that fee quotes to others seeking her services would be necessary to establish the bargain or would add any support to Mr. Gravley's argument that K.L. had an ulterior motive to accuse him of rape. For that reason, we hold that the circuit court neither erred nor abused its discretion when it denied their admission. But even if it did, an independent review of the record persuades us that the court's denial of that evidence was clearly harmless beyond a reasonable doubt. Not only was Mr. Gravley acquitted on the rape charges, K.L.'s prostitution and his failure to pay her was fully divulged at trial.

II. Sufficiency of the Evidence for Second-Degree Assault Conviction

Standard of Review

As the Court of Appeals in *State v. McGagh*, 472 Md. 168, 194 (2021), has recently reiterated:

> We normally review sufficiency of evidence rulings by whether "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Manion*, 442 Md. at 430 (quoting *Jackson*, 443 U.S. at 319) (emphasis in original). This Court does not "ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." *Dawson v. State*, 329 Md. 275, 281 (1993) (emphasis in original). "[O]ur concern is only whether the verdict was supported by sufficient evidence, direct or circumstantial, which could fairly convince a trier of fact of the defendant's guilt of the offenses charged beyond a reasonable doubt." *Taylor v. State*, 346 Md. 452, 457 (1997). The deferential standard recognizes the trier of fact's better position to assess the evidence and credibility of the witnesses. *Smith v. State*, 415 Md. 174, 184-85 (2010).

Contentions

Mr. Gravley contends that the evidence was insufficient to convict him of second-degree assault. Citing *Kucharczyk v. State*, 235 Md. 334 (1964), he argues that K.L.'s statement "if [$150] would have got paid, we wouldn't be here today" was a contradictory statement that "went to the very essence" of all the charges and reduced the probative value of her testimony as to "each and every charge to a level that could never support a finding of guilt beyond a reasonable doubt."

The State contends that the evidence was sufficient to convict Mr. Gravley of second-degree assault of the intent-to-frighten type. Noting that Mr. Gravley does not contest any particular element of that offense, the State argues that the court, as the factfinder, could credit all, part, or none of the State's evidence and resolve any contradictions in the evidence. And, in addition to her testimony, other evidence supported the conviction, including the BB gun recovered from Mr. Gravley's car, the used condom found on his person, the threatening text messages on his phone, and the video surveillance placing him at the hotel the time the messages were sent.

Discussion

To convict Mr. Gravley of second-degree assault of the intent-to-frighten type, the State needed to prove, beyond a reasonable doubt: (1) that Mr. Gravley "committed an act with the intent to place [K.L.] in fear of immediate physical harm"; (2) that he had "the apparent ability, at the time [of the incident], to bring about the physical harm"; and (3) that K.L. was "aware of the impending physical harm." Md. Code Ann., Crim. Law § 3-

203; *see Jones v. State*, 440 Md. 450, 455 (2014) (citing *Snyder v. State*, 210 Md. App. 370, 382 (2013)).

As the State noted, Mr. Gravley does not argue the insufficiency of the evidence as it relates to any of the elements of that offense. His challenge rests on K.L.'s credibility and her statement that if $150 "had got paid, we wouldn't be here today." He argues that the trial court recognized that her statement "had no qualifications." Therefore, he contends that her statement reduced the probative value of her testimony as to every charge, "to a level that could never support a finding of guilt" as to any of the charges. The State counters that credibility issues are to be resolved by the trier of fact and that K.L.'s testimony regarding the second-degree assault is supported by other evidence.

The trial court explained that its decision took into account K.L.'s statement, which went "to the very essence of *some* of the charges against Mr. Gravley." Although the trial court did not enumerate the charges impacted by that statement, its verdict clearly indicates that it did not go to "the very essence" of the second-degree assault charge or reduce the probative value of her testimony relating to that charge.

K.L. testified that Mr. Gravley showed up to the hotel with a handgun, that he pointed at her within minutes of arriving. In addition, he showed her threatening texts purportedly sent to him by someone else telling him to kill her.[2] And as a result of those actions, she was afraid of physical harm. That evidence, if believed, was sufficient to

[2] Evidence introduced at trial suggests that Mr. Gravley sent those texts to himself.

support finding that Mr. Gravley intended to place K.L. in fear of immediate physical harm, that he had the ability to bring the harm about, and that she was fully aware of that harm. *See Hill v. State*, 134 Md. App. 327, 356 (2000) (sustaining a second-degree assault conviction where a defendant had demanded that a math teacher give him an A in the course, showed a gun in a holster, threatened to kill the teacher, and described how he would dispose of the teacher's body unless he complied).

Whatever impact K.L.'s statement may have had on the other charges, the court was not required to reject her testimony regarding what transpired between Mr. Gravley's entrance into the hotel room and the intercourse itself. Moreover, aspects of her testimony were bolstered by other evidence. Officer Jerrell Eaton testified that when he arrived on the scene, K.L. was crying on the steps while trying to talk to another officer. He stated that she "was very shaken up, crying, her hands were shaking, and when she tried to talk to me, it was just overwhelmed by crying. She would stop and had to get herself together to continue to talk to me."

Officer Sisto Vetere saw a car that matched the description of the car seen fleeing the scene, and he followed it until the driver, who was Mr. Gravley, parked and got out. Officer Vetere placed Mr. Gravley under arrest with the help of other officers. When Officer Vetere approached the car, the driver's door was open, and he was able to see the handle of what appeared to be a handgun wedged between the driver's seat and the center console.

Mr. Gravley looks to *Kucharcyzk v. State*, 235 Md. 334 (1964), for support of his position. In that case, the defendant was convicted of "the commission of an unnatural and perverted sex act in the first count and assault and battery in the second." *Id.* at 335. The victim was "a mentally deficient 16-year-old boy," who had been deemed competent to testify at the bench trial. *Id.* at 336.

On direct examination, the victim first testified that he went to a public lavatory where the defendant happened to be. The defendant offered him some wine, and he drank two glasses, but that was all that had happened. *Id.* Later, he testified that the man exposed himself, pulled him close, and attempted to commit "buggery," but he refused to comply. *Id.* He later testified that the defendant took him to a nearby garage where the defendant proceeded to grab his head and force it down to his groin area. *Id.* He then testified that he was convinced to take his pants off and lay next to the defendant before the defendant took him back to his home. *Id.*

On cross-examination, the victim alleged that the lavatory manager had observed the defendant trying to sexually assault him, but the manager testified that he only told them to leave. There was no testimony from anyone that the defendant had said or done anything to the victim. *Id.* The victim also testified that the only time he had been to the garage was the day of the alleged assault. *Id.* But, when questioned by the court, he stated that he had been to it other times, and that he told the defendant where the garage was and had taken him there. *Id.* The last question on cross-examination was "nothing happened in

the garage at all, did it?" The victim responded "no, sir." *Id.* at 337. On redirect, however, when asked again whether an assault occurred, the victim responded in the affirmative. *Id.*

In short, the only evidence of what the defendant in *Kucharczyk* had said or done with the victim came from the victim. The Court of Appeals held that his testimony was "so contradictory that it lacked probative force and was thus insufficient to support a finding beyond a reasonable doubt of the facts required to be proven." *Id.* As this Court stated in *Bailey v. State*, 16 Md. App. 83, 93-95, the facts in *Kucharczyk* were "extreme." Notwithstanding K.L.'s statement about there being no case had she been paid, her testimony regarding what happened prior to intercourse was in no way "so contradictory" or inconsistent as the victim's testimony in *Kucharczyk*. *Id.* at 94.

Viewing the evidence in a light most favorable to the State, we hold that there was sufficient evidence for a rational trier of fact to have determined beyond a reasonable doubt that Mr. Gravley assaulted K.L. in the second degree.

THE JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY IS AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.