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NOT TO BE PUBLISHED

Commonwealth Of Kentucky

Court of Appeals

NO. 2002-CA-002138-MR

SCOTTY RICHARDS

APPELLANT

v. APPEAL FROM GREENUP CIRCUIT COURT
HONORABLE LEWIS D. NICHOLLS, JUDGE
ACTION NO. 02-CR-00047

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: COMBS, TACKETT, AND VANMETER, JUDGES.

TACKETT, JUDGE: Scotty Richards appeals from the judgment of the Greenup Circuit Court convicting him of second-degree rape and sentencing him to five years' imprisonment. He argues that the trial court erred by denying his motion for a directed verdict. Finding that the evidence presented was sufficient to allow the case to be submitted to the jury, we affirm.

The events in question occurred on July 4, 2001, when Richards stopped by the home of Amanda Hickson's grandmother to

pick up some clothes on his way from work to a cookout at his parents' home. Hickson was Richards' girlfriend and the two had spent the previous night at her grandmother's home. When Richards arrived, Hickson's thirteen year-old cousin, A.B., was home alone. According to A.B., Richards sat beside her on the couch as she was watching television and began touching her chest and between her legs. This made her uncomfortable so she got up and started adjusting the television to put some distance between them. When she returned to the couch, Richards grabbed her arm, forced her into his lap and started kissing her. A.B. retreated to the kitchen to do dishes, but Richards followed her. He brought her back to the couch, held her arms, sat her on his lap with her legs forced apart and kissed her. After he unfastened her shorts, Richards told A.B. to take them off and she complied because she was frightened. Richards then laid her on the couch, orally sodomized her, inserted his finger into her vagina, and then had sexual intercourse with her. A.B. estimated that this incident lasted from five to ten minutes and then Richards changed clothes and left. As he was leaving, Richards told A.B. to keep the incident their little secret. She estimated that he was at her grandmother's for twenty to twenty-five minutes.

Afterwards, A.B. called one of her girlfriends to tell her what Richards had done. The friend encouraged A.B. to tell

her parents, but she refused saying that she was afraid he would hurt her if she told. About a month later, A.B.'s little sister told their parents what had happened because A.B. was afraid she might be pregnant. A home pregnancy test was negative; however, A.B.'s father contacted the Greenup County Sheriff's Department to file a criminal complaint against Richards for raping his daughter. Deputy Darrell McCarty interviewed A.B., Richards and other witnesses. Richards' account of the events in question differed substantially from A.B.'s. He stated that he stopped by her grandmother's, changed clothes and left without speaking to A.B. who was in the living room watching television. Richards estimated that he was in the home for about five minutes before leaving to go to a cookout at his parents' house.

At trial, A.B. and Richards both testified to their version of the events of July 4, 2001. Although McCarty had previously tape recorded statements from each of them, these were unavailable by the time of the trial. In addition, Richards introduced testimony from his mother who recalled him arriving at home at three o'clock that afternoon. She stated that she took note of the time because he was rarely home on time. Richards testified regarding the time he left work and the time required to drive to his parents' house (via Hickson's grandmother's) while observing the speed limit. He argued that he would have arrived home much later had he in fact raped A.B.

as she claimed. There was also a disputed account of witness Chris Miller's statements to police. According to McCarty, Miller stated in an interview that Richards had admitted having sexual intercourse with A.B., but stated that there was no force involved. However, McCarty did not make notes regarding the interview and never got a written statement from Miller. At Richards' trial, Miller testified that he never told police Richards had admitted to having sexual intercourse with A.B. There was no medical evidence introduced since no examination of the victim had ever been undertaken. The jury was instructed on the indicted offense of second-degree rape as well as the lesser-included offense of second-degree sexual abuse. Richards was convicted of second-degree rape, and this appeal followed.

Richards' sole issue on appeal is the trial court's refusal to grant his motion for a directed verdict. He alleges that A.B.'s testimony regarding the rape did not constitute sufficiently credible evidence to convict him. On a motion for a directed verdict, the trial court is required to consider all of the evidence in the light most favorable to the nonmoving party and to reserve questions regarding the credibility of witnesses to the jury. Commonwealth v. Benham, Ky., 816 S.W.2d 186 (1991). The standard of review is whether, under the evidence as a whole, it would be unreasonable for the jury to find guilt.

Richards claims that A.B.'s account of the events in question is so incredible that it did not support a jury finding of guilt. Weinel v. Commonwealth, 302 Ky., 742, 196 S.W.2d 375 (1946). He points out that according to the timeline testified to by himself and his mother there was not sufficient time for the rape to have occurred between the time he left work and the time he arrived at his parents' cookout at 3 p.m. In addition, Richards introduced testimony to the effect that A.B. was infatuated with him and would parade around in front of him and sit on his lap when he came to see Hickson. Neither of these factors would support a determination, under Weinel, that A.B.'s testimony was too incredible to support a conviction.

In Weinel, the appellate court determined that it would have been physically impossible for the prosecuting witness to be raped in the manner she described. Whether or not A.B. had a crush on Richards is irrelevant to this type of determination. Moreover, the fact that Richards and his mother testified that there was not enough time for the rape to occur as described does not render A.B.'s testimony too incredible to be submitted to the jury. Rather, it was the jury's function to determine, after hearing evidence of the timeline disparities and A.B.'s alleged flirtatious behavior to Richards on occasions prior to the event, which witnesses were credible. Therefore,

the trial court correctly denied Richards' request for a directed verdict of acquittal.

For the foregoing reason, the judgment of the Greenup Circuit Court is affirmed.

ALL CONCUR.

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