

Commonwealth Of Kentucky

Court of Appeals

NO. 2005-CA-001044-MR

LLOYD "MONK" PATTON

APPELLANT

APPEAL FROM MAGOFFIN CIRCUIT COURT
v. HONORABLE JOSEPH F. BAMBERGER, SPECIAL JUDGE
ACTION NO. 02-CR-00020

COMMONWEALTH OF KENTUCKY

APPELLEE

OPINION
AFFIRMING

** ** * * * * *

BEFORE: GUIDUGLI¹ AND SCHRODER,² JUDGES; MILLER, SPECIAL JUDGE.³

SCHRODER, JUDGE: This is an appeal from a judgment pursuant to a jury verdict convicting appellant of first-degree rape.

Appellant's sole argument on appeal is that there was insufficient evidence to support the conviction. From our

¹ Judge Daniel T. Guidugli concurred in this opinion prior to the expiration of his term of office on December 31, 2006. Release of the opinion was delayed by administrative handling.

² Judge Wilfrid A. Schroder completed this opinion prior to the expiration of his term of office on December 31, 2006. Release of the opinion was delayed by administrative handling.

³ Retired Judge John D. Miller, sitting as Special Judge by assignment of the Chief Justice pursuant to Section 110(5)(b) of the Kentucky Constitution.

review of the trial, the trial court properly denied the motion for directed verdict because there was sufficient evidence that appellant forced the victim to have sexual intercourse. Thus, we affirm.

On July 11, 2001, the victim, J.M., a sixteen-year-old female, was dropped off at the Magoffin County Courthouse by her father to report for her third day of community service for a prior juvenile offense. J.M. was directed to report to appellant, Lloyd "Monk" Patton, who was a custodian at the courthouse. At trial, the testimonies of J.M. and Patton were conflicting as to the events that unfolded after J.M. reported to Patton. J.M. claimed that Patton forcibly had sexual intercourse with her, while Patton maintained that the intercourse was consensual. Patton moved for a directed verdict on the sole grounds that there was insufficient evidence of the "forcible compulsion" element of KRS 510.040(1)(a). The court denied the motion. The jury found Patton guilty of first-degree rape and he was sentenced to ten years' imprisonment. This appeal followed.

Patton argues on appeal that the trial court erred in denying his motion for directed verdict because the Commonwealth failed to present sufficient evidence that Patton forced J.M. to have sex. Patton maintains that J.M.'s lack of credibility was

such that the trial court should have disregarded J.M.'s testimony and entered a directed verdict in his favor.

On motion for directed verdict, the trial court must draw all fair and reasonable inferences from the evidence in favor of the Commonwealth. If the evidence is sufficient to induce a reasonable juror to believe beyond a reasonable doubt that the defendant is guilty, a directed verdict should not be given. For the purpose of ruling on the motion, the trial court must assume that the evidence for the Commonwealth is true, but reserving to the jury questions as to the credibility and weight to be given to such testimony.

On appellate review, the test of a directed verdict is, if under the evidence as a whole, it would be clearly unreasonable for a jury to find guilt, only then the defendant is entitled to a directed verdict of acquittal.

Commonwealth v. Benham, 816 S.W.2d 186, 187 (Ky. 1991).

J.M. testified at trial that she worked with Patton at the courthouse for the first two days of her community service and nothing happened. The second day Patton told her to come in earlier the next morning, at 8 a.m. According to J.M., when she came in the next day, Patton told her he wanted to show her the janitor room in the basement. She stated that he then started grabbing her and feeling her up. When she said no, they went back to the other janitor room and sat down. J.M. testified that at that point, Patton started rubbing her leg and asked if she wanted to have sex with him. J.M. stated that she told him no. After court let out that day, she and Patton went upstairs

to the courtroom with the broom. She and Patton went into the jury room off the courtroom. J.M. then described how Patton pinned her against the wall with his hands and she got scared. She claimed she told him to stop, but he would not stop. J.M. testified that Patton put her down on the floor and held her there, then took her pants off and said "this is hot." She stated that she kept telling him to stop and struggling to get him off her, but could not. J.M.'s testimony regarding the alleged sexual intercourse was as follows:

I kept on telling him to stop. Then he said, "hang on baby." He said, "I'm getting ready to come." And I finally I got him off of me.

Afterwards, J.M. told Patton she had to go to the bathroom and ran downstairs. J.M. testified that when she got downstairs, she saw her cousin Ray and told him "to get somebody". J.M. stayed at the courthouse the rest of the day, and was sitting next to Patton when her father came to pick her up at the end of the day. When asked if she told anyone that day about the rape, J.M. replied "no", because Patton had told her if she told anyone, he would hurt her. J.M. testified that she did not tell her mother about the rape until the next morning when her mother told her it was time to go to work. When asked if J.M. at anytime told Patton that she would have sex with him, J.M. replied "no".

Patton's account of events of that day was quite different from J.M.'s. Patton testified that he and J.M. started out the day picking up trash and checking on the bathrooms. After that, they went to the janitor's room to sit until court let out. According to Patton, J.M. asked him where the door in the janitor's room led to and started for the door, expecting Patton to follow her. When he did not follow her, she stopped at the top step and came back. When court let out, Patton told J.M. it was time to clean up the jury room. Patton testified that J.M. initiated the first physical contact that day by pinching his side and his butt as they left the janitor's room. Patton stated that when they got to the jury room, J.M. continued to pinch him and pressed herself up against him as he stood against the wall. At that point, Patton locked the door to the room as directed by J.M. While he was locking the door, J.M. took off her shorts and panties and laid down on the floor. Patton testified that she told him to "come on" as she lay on the floor. According to Patton, J.M.'s only concern was that she did not want to get pregnant, telling him not to come inside her. Patton testified, "When I got ready, I got off her."

Prior to trial, the parties stipulated to the results of a sexual assault examination of J.M. the day after the alleged rape which obtained a blood standard, vaginal smear, vaginal swabs, buccal swabs, control swabs, external genital

swabs, dried secretion swabs, head hair, pubic hair, and pubic hair combings. A piece of carpet from the jury room and the panties J.M. was wearing on the day in question were also tested. The results of the tests revealed that semen was found on the panties and the piece of carpet, a limited amount of semen was found on the dried secretion swabs, and no semen was found on the vaginal smears, vaginal swabs, and external genital swabs. The results of the DNA analysis revealed that the semen on the carpet matched the DNA of Patton, and the substances found on the panties matched the DNA of Patton and J.M. The stipulation was read by the court to the jury at the beginning of the trial.

Other witnesses who testified for the Commonwealth were Detective Mike Gable of the Kentucky State Police and J.M.'s mother, who both testified to what J.M. told them about the rape. Also Ray Mullins, the cousin J.M. saw immediately after the rape, testified that J.M. came out of the room crying and saying "he raped me." For the defense, two courthouse employees who were at the courthouse on the day in question testified to J.M.'s dress and demeanor on that day.

From our review of the evidence, J.M.'s testimony alone was sufficient to establish the "forcible compulsion" element of first-degree rape. KRS 510.040(1)(a). J.M. described how Patton held her down while she was telling him to

stop and struggling to get him off of her. Our Supreme Court has held that a jury is entitled to rely on the testimony of one witness, to the exclusion of other witnesses, in making a finding of guilt:

The testimony of even a single witness is sufficient to support a finding of guilt, even when other witnesses testified to the contrary if, after consideration of all of the evidence, the finder of fact assigns greater weight to that evidence. On review, the appellate court should not reevaluate the evidence or substitute its judgment of the credibility of the witnesses for that of the jury.

Commonwealth v. Suttles, 80 S.W.3d 424, 426 (Ky. 2002)

(citations omitted). And in Fletcher v. Commonwealth, 250 Ky. 597, 63 S.W.2d 780 (1933), the Court held that the rape victim's testimony alone was sufficient to support the conviction.

It was the jury's prerogative in this case to believe J.M. and find that Patton forced her to have sexual intercourse. Accordingly, the trial court properly denied the motion for directed verdict.

For the reasons stated above, the judgment of the Magoffin Circuit Court is affirmed.

ALL CONCUR.

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