Circuit Court for Montgomery County
Case No. 137801C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1932

September Term, 2023

ROME HILL

v.

STATE OF MARYLAND

Reed,
Leahy,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: November 25, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In the Circuit Court for Montgomery County, Rome Hill, appellant, was convicted of four counts of first-degree rape, use of a firearm during the commission of a violent crime, and related charges following a jury trial on October 19, 2023. Appellant presents the following questions for our review:

> "I. Was there sufficient evidence to find that [Ms. XY's][1] fear of Hill was genuine and reasonable causing her to submit to sex with Hill?
>
> II. Was there sufficient evidence of lack of consent to sex when [Ms. XY] called Hill back into her apartment because she knew he wanted more sex?"

We shall affirm.

I.

Appellant was indicted by the Grand Jury for Montgomery County on four counts of first-degree rape, two counts of attempted first-degree rape, false imprisonment, use of a firearm in the commission of a crime of violence, possession of a stolen regulated firearm, and wearing, carrying, and transporting a loaded handgun on his person. A jury convicted appellant of four counts of first-degree rape, use of a firearm in the commission of a crime of violence, and wearing, carrying, and transporting a loaded handgun on his person. The court imposed a sentence of incarceration of twenty-five years for each of the first-degree rape counts, to be served concurrently, 5 years for use of a firearm in the commission of a

[1] For privacy reasons, we shall refer to the victim as Ms. XY.

crime of violence to be served consecutively and 3 years suspended for wearing, carrying, and transporting a loaded handgun on his person.

Beginning on or about September 9, 2020, appellant began sending Ms. XY direct messages ("DMs")[2] on Facebook. After messaging a few times, the two decided to meet in-person on September 11, 2020, at Ms. XY's second-floor studio apartment. When appellant arrived at the apartment, the two greeted each other for the first time in-person and sat down to watch a movie. After the movie, appellant pulled a gun out of his right pocket and told Ms. XY he needed to put it somewhere. She told him that he needed to leave. He responded that he wasn't going anywhere and put the gun on top of the refrigerator.

Ms. XY told him to leave and said she would pay for his Uber ride. Appellant told her he wasn't going anywhere. He took a throw from her couch and placed it on top of her, kissing her neck and touching her thigh. Ms. XY took off the throw and told appellant to leave. Instead, appellant took Ms. XY by the hand and led her to her bed where he told her to sit and told her that if she moved, he would blow her head off.

Ms. XY testified that she went along with what appellant was doing because she "didn't want to aggravate him." She said that appellant changed in those moments, and she was "scared that he was going to take that as me being aggressive if I told him that I wasn't going with him and that he might get even more aggressive with me." Throughout the

[2] DMs on Facebook are "private text messages sent on social media to a specific individual or group." *DM*, MERRIAM-WEBSTER DICTIONARY (Nov. 19, 2024, 12:15PM), https://www.merriam-webster.com/dictionary/DM.

night, appellant engaged in sexual acts with Ms. XY, telling her that if she didn't do what he told her, he "would blow her head off." He proceeded to have vaginal and oral sex with Ms. XY.

At one point, appellant went to the bathroom and told Ms. XY to get back on the bed in the same position as earlier and if she did not, "he would blow [her] head off." While he was in the bathroom, Ms. XY told him she would get an Uber for him so he could leave. Appellant refused. When asked why she didn't leave on her own, Ms. XY stated that she was "scared that just [her] getting up—that he would run and get the gun and then he would shoot [her]."

After appellant exited the bathroom, he began pacing in the hallway, saying that he didn't rape Ms. XY. Ms. XY told him he could leave and then appellant attempted to have anal sex with her. She told him it wouldn't work, and he started calling her names and he became upset; then he had vaginal sex with her again. After, appellant threatened to blow her head off unless she performed oral sex on him, which she did.

Ms. XY testified that she did not consent to any of the sexual acts and when asked why she "let" it happen said, "[b]ecause I was scared that he would get more aggressive with me, and I didn't want him to hit me or take the gun and try to shoot me."

When appellant was finished, he went back to the bathroom and Ms. XY stayed on the bed as he told her to do. Appellant returned from the bathroom, laid down and fell asleep with his arm over her legs. Ms. XY testified that each time she tried to move he would tighten his arm around her, while staying asleep. She said this made her too scared

to try to get up. At one point, appellant woke up and went to the bathroom again. This time, Ms. XY got up, grabbed her keys and phone and ran out the door.

During cross-examination, defense counsel asked whether Ms. XY remembered stopping appellant from leaving the apartment after one of the alleged rapes by saying, "I know what you like. Come on. I don't want you to get locked out of my crib. The door locks automatically." Ms. XY responded that she remembered saying that and that she did so "[b]ecause [she] didn't think that he was leaving . . . [she] was having him come back to [her] because [she] didn't know where he was and [she] knew that, when [she] talked to him like that, he was less aggressive." On re-direct examination, Ms. XY testified that she felt "nervous" and that "the times [she] would tell him to leave he would just get even more flustered. So [she] realized that talking nicely to him and more affectionate was him being less aggressive. He was still threatening to blow [her] head off, but . . . [she] didn't want him to hit me and for it to get physical."

As Ms. XY fled her apartment, she called 911 and spoke with a dispatcher. Officer Ivey of the Montgomery County Police Department responded to the 911 dispatcher's call to meet Ms. XY at the intersection of Georgia Avenue and Pritchard Road. Ms. XY told the operator that there was a man with a gun in her house who had raped her. She told the operator he had been there for almost 5 hours and repeatedly threatened to shoot and kill her. Officer Ivey testified that Ms. XY was crying, distraught, and difficult to understand through her sobbing. The officer noticed she wasn't wearing shoes. Ms. XY gave the

officer a key to her apartment and the officer went with two others to see if the man was in Ms. XY's apartment.

The officers entered Ms. XY's apartment and found appellant lying in the bed with the lights off. The officers arrested appellant and retrieved a handgun from the top of the refrigerator.

Ms. XY was treated for her injuries at Shady Grove Hospital, where she was examined by a forensic nurse, Kathleen Wells. Nurse Wells testified as an expert in forensic nursing and administering sexual assault forensic examinations. Ms. Wells confirmed that Ms. XY did not report any physical struggle between her and appellant when she conducted the exam.

Appellant was interviewed by Officer Elizabeth Young and Detective Bryan Savage of the Montgomery County Police Department. During the interview, appellant repeatedly denied having sex with Ms. XY. Appellant stated that if he did have sex with her, he didn't remember it.

Finally, the State offered evidence from Allison Danielson, an expert in the field of forensic biology and DNA analysis. Ms. Danielson testified that she received and analyzed sexual assault kits and buccal samples, one from Ms. XY and one from appellant. The vaginal sample from Ms. XY revealed a major DNA sample consistent with appellant. The penile sample from appellant's kit revealed a major DNA sample consistent with Ms. XY.

After the State rested, appellant moved for judgment of acquittal on all charges. After the State conceded that the evidence was insufficient on the charge of possession of

a stolen regulatory handgun and informed the court that it would be entering a *nolle prosequi* to attempted first-degree rape, anal sex and false imprisonment, the Court ruled that there was sufficient evidence to move forward on the remaining charges.

Appellant exercised his Fifth Amendment right to remain silent and presented no evidence. He renewed his motion for judgment of acquittal, arguing that Ms. XY was not a credible witness. The Court denied the motion and the jury returned its verdict as indicated above. This timely appeal followed.

II.

Appellant argues that Ms. XY's fear in this case was either not genuine or not reasonable based on the facts disclosed at trial and that her testimony that she was in fear of appellant was "inherently incredible." Thus, no rational trier of fact could have found that she was in fear. Appellant argues that there was insufficient evidence of lack of consent to the sexual acts because Ms. XY called appellant back into her apartment at one point in the evening. Appellant maintains that the only conclusion that can be drawn from Ms. XY calling appellant back into the apartment is because she consented to and was consenting to sex. Finally, appellant argues that when a witness' testimony is inherently incredible, this is a question of law, not credibility. Appellant cites to *Rothe v. State's* analysis of the so-called *Kucharczyk* Doctrine, which in very rare cases is confined to "unresolved contradictions within a single witness's trial testimony as the central issue of the case." 242 Md. App. 272, 279 (2019). Appellant asserts that Ms. XY's testimony that she called

appellant back to the apartment because she knew he wanted more sex was an unresolved contradiction in a case where the central issue was whether she was in fear and whether she consented to sex with appellant.

The State argues that there was sufficient evidence presented to convict appellant of first-degree rape. The State notes that the role of the factfinder is to assess a witness's credibility and weigh the testimony and this Court does not substitute its judgment for that of the factfinder.

III.

We review the sufficiency of the evidence to determine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Scriber v. State*, 236 Md. App. 332, 344 (2018). As a reviewing court, we do not judge the credibility of witnesses or resolve conflicts in the evidence. *Scriber*, 236 Md. App. at 344. The question before us is "not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Id.* (emphasis in original).

In reviewing the sufficiency of the evidence to support a criminal conviction, we consider "whether the record evidence could reasonably support a finding of guilt beyond a reasonable doubt." *Tichnell v. State*, 287 Md. 695, 717 (1980) (citation omitted). We determine "whether, after viewing the evidence in the light most favorable to the

prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Id.*

"Contradictions in testimony go to the weight of the testimony and credibility of the evidence, rather than its sufficiency, and we do not weigh the evidence or judge the credibility of the witnesses, as that is the responsibility of the trier of fact." *Pryor v. State*, 195 Md. App. 311, 329 (2010). It is "at the very core of the common law trial by jury . . . to trust in its fact finders, after full disclosure to them, to assess the credibility of the witnesses and to weigh the impact of their testimony." *Bailey v. State*, 16 Md. App. 83, 94 (1972).

The case of *Kucharczyk v. State*, 235 Md. 334 (1964) lies at the heart of appellant's argument. A few brief comments about *Kucharczyk*. In *Kucharczyk*, the alleged victim was a disabled sixteen-year-old boy with an I.Q. of 56. The Court found that his testimony was inherently contradictory about whether the assault and battery allegedly committed by Mr. Kucharczyk had occurred. *Id*. at 336-37. Reversing the conviction, the Supreme Court of Maryland stated that "if any witness's testimony is itself so contradictory that it has no probative force, a jury cannot be invited to speculate about it or to select one or another contradictory statement as the basis of a verdict." *Id*. at 338 (internal citation and quotations omitted).

Significantly, *Kucharczyk* has not found favor in Maryland jurisprudence, and aside from having been found to be "extremely limited in scope," *Smith v. State,* 302 Md. 175, 182 (1985), it has never been applied in a criminal appeal since its publication. *See Vogel*

v. State, 76 Md. App. 56, 59 (1988) ("Some appreciation of the limited utility of the so-called *Kucharczyk* doctrine may be gathered from the fact that it was never applied pre-*Kucharczyk* in a criminal appeal and it has never been applied post-*Kucharczyk* in a criminal appeal"). To emphasize the point, in *Rothe v. State*, 242 Md. App. 272, 285 (2019), this Court stated as follows:

> "The so-called Kucharczyk Doctrine, if it ever lived, is dead. It has been dead for a long time. Forget it. Damaged credibility is not necessarily inherent incredibility."

We decline to provide life support to this dead, or near death, "doctrine."

Here, there were no internal inconsistencies in the testimony of the witnesses that rise to the level of those at issue in *Kucharczyk*. Any such inconsistencies or cause to question the witness' veracity affected the reliability of the testimony, not its sufficiency, and were for the jury to resolve. We conclude that the witness' testimony was sufficient to sustain appellant's convictions.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.