

NO. 31467-7-III

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Court of Appeals
Division III
State of Washington

STATE OF WASHINGTON
COURT OF APPEALS - DIVISION III

STATE OF WASHINGTON,

Respondent,

vs.

JONATHAN KEENAN GORDON

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR
FRANKLIN COUNTY

BRIEF OF RESPONDENT

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I. STATEMENT OF FACTS

The Defendant, Jonathan Gordon (Appellant herein), was charged by the State by Second Amended Information with Rape in the Second Degree (Count I) and Assault in the Second Degree with a Special Allegation of Sexual Motivation (Count II) for acts which occurred on May 10, 2011 in Pasco, Franklin County, Washington. (CP 99). The Rape charge was predicated under R.C.W. 9A.44.050(1)(a) and the Assault was charged under RCW 9A.36.021(1)(g), with the Special Allegation of Sexual Motivation being defined in RCW 9.94A.030(47) and further discussed in RCW 9.94A.835. (Id.). The victim of both of those charges was Ms. Braycie Baker. (Id.).

On May 10, 2011 around one o'clock in the morning Ms. Baker contacted the Defendant, who agreed to pick her up at the 7/11 by her home. (1/9/13 RP 101). Jessica [Hash] and Nathan [Murphy] were also in the vehicle when it arrived. (Id. at 101). Ms. Baker was driven to the Stonegate Apartments, located on Road 68 in Pasco. (Id. at 104). She was led to a back bedroom, and told to strip completely naked. (Id.). She observed three butcher knives that were placed randomly throughout the room. (Id. at 104-105).

Nathan Murphy and Jessica Hash were both present in the apartment but left the room before the Defendant's sexual assault of Ms. Baker occurred. (Id. at 107-108). Despite not being present, Mr. Murphy testified that any sexual contact between the Defendant and Ms. Baker was consensual. (1/10/13 RP 205). He admitted later that because he was not in the room, he would not have known whether sexual acts between the Defendant and Ms. Baker were consensual or not. (Id. at 208). Mr. Murphy, Ms. Hash, the Defendant, and Ms. Baker all consumed methamphetamines. (1/9/13 RP 105-106). Mr. Murphy confirmed to Detective Greenhalgh that there were knives placed throughout the room, but denied that when he testified. (1/10/13 RP 197). Ms. Hash also testified that the Defendant had placed knives throughout the room. (Id. at 225). She said the Defendant talked to Ms. Baker aggressively. (Id.). She testified that she saw the Defendant assault Ms. Baker by slapping her and choking her. (Id. at 226). Mr. Murphy also told Detective Greenhalgh that he saw the Defendant slap and choke Ms. Baker, but denied that in his testimony. (Id. at 200).

After Mr. Murphy and Ms. Hash left the room, Ms. Baker was raped by the Defendant, having never agreed to have sexual intercourse with him. (1/9/13 RP 107). When she tried to resist or showed facial expressions of fear, the Defendant hit her, bit her, punched her, and pulled her hair. (Id. at 107, 109). He held his hands around her neck with force and pressed her to the bed, blocking her airway. (Id. at 108, 110). He was sexually aroused and had an erection while doing so. (Id. at 111). The Defendant would not let Ms. Baker shower alone, and raped her again in the shower. (Id. at 111). Ms. Baker did not have a cell phone with her and did not physically scream for help as she feared what could have happened to her. (Id. at 108).

Ms. Baker lied about having to work for her grandparents and said she would bring the Defendant money; he eventually let her leave the apartment at 4:00 p.m.. (Id. at 111-112). Ms. Baker had no intention of getting law enforcement involved with this incident, but was forced to seek medical help by going to the Emergency Room on May 14, 2011 to address severe migraines, lower back pain, a urinary tract infection and a kidney infection. (Id. at 97). Some of her bruises were still visible to the responding officer. (Id. at 86-87). Dr. Kevin Hodges noted multiple areas of

bruising and abrasions when he examined Ms. Baker that were consistent with an assault that had occurred four days prior. (1/10/13 RP 170-171).

In an interview with Detective Greenhalgh, the Defendant told the detective that he knew how to talk to women and felt that he could get what he wanted from Ms. Baker by manipulating her. (Id. at 243). He confirmed to the detective that there were knives placed throughout the room (Id. at 245), but denied that in his testimony. (Id. at 284). He told the detective that he had consensual sex with Ms. Baker on May 10, 2011 (Id. at 243-244), but denied that in his testimony. (Id. at 280-281). The Defendant likewise denied slapping, hitting, biting, punching, and strangling Ms. Baker. (Id. 281). Ms. Baker, Mr. Murphy, Ms. Hash and the Defendant all agreed that Ms. Baker never went back to the Defendant's apartment after May 10, 2011. (1/9/13 RP 141; 1/10/13 RP 200; Id. at 226; Id. at 283).

The Defendant's recitation of facts as it relates to the procedural history and trial continuances is accurate and will be adopted by the State. (Brief of Appellant, 1-3).

II. ARGUMENT

The Defendant identified two assignments of error. First, that his right to speedy trial was violated, and second, that the State's evidence as proved at trial was insufficient to convict him beyond a reasonable doubt. (Brief of Appellant at 1). Both assignments of error should be resolved in the State's favor and the Defendant's convictions should be affirmed.

A. THE DEFENDANT'S RIGHT TO SPEEDY TRIAL WAS NOT VIOLATED IN THIS CASE. HIS MATTER WAS PROPERLY TRIED WITHIN THE CrR 3.3(b)(5) BUFFER PERIOD.

A criminal defendant may seek relief outside the time for trial court rule and under the constitutional speedy trial provision. State v. Schmidt, 30 Wn. App. 887, 897, 639 P.2d 754 (1982). Unlike the rule under CrR 3.3, the constitutional right attaches on the date of arrest or the date of filing of the information, whichever comes first. State v. Higley, 78 Wn. App. 172, 184, 902 P.2d 659, review denied 128 Wn.2d 1003, 907 P.2d 296 (1995). Such a claim must show not the expiration of a fixed time, but the expiration of a reasonable time. Id. at 185. A reasonable time is determined by a review of all the factors in the particular case -- particularly four factors: the length of delay, the reason for the delay, whether or not the

defendant asserted his right to speedy trial, and the existence of any resulting prejudice. Id.; See also Barker v. Wingo, 407 U.S. 514, 92 S.Ct. 2182 (1972).

In this case, trial was re-set from November 28, 2012 to December 12, 2012 so the Defense could subpoena witnesses. (11/27/12 RP 20). On December 4, the State moved for a continuance based on the unavailability of Dr. Kevin Hodges who was out of the country. (12/4/12 RP 2). The Defense objected to the proposed January 9, 2013 trial date. (Id. at 6). Moving the trial in this case from November 28, 2012 to December 12, 2012 was done by joint cause. The 14 days between those two trial dates were properly excluded from the time for trial under CrR 3.3(e)(3).

In requesting a trial date of January 9, 2014, the State argued that with the excluded 14 days and the 30 day buffer period under CrR 3.3(b)(5), January 9, 2013 was within speedy trial. (Id. at 7). The court agreed (Id. at 12) and the trial commenced on January 9, 2014. "CrR 3.3 provides 'flexibility in avoiding the harsh remedy of dismissal with prejudice,' including a '30-day buffer period' for excluded periods and a one-time 'cure period' ... that allows the court to bring a case to trial after the expiration of the time for trial period." State v. Saunders, 153 Wash. App. 209, 220,

220 P.3d 1238, (2009) quoting State v. Flinn, 154 Wash.2d 193, 199 n. 1, 110 P.3d 748 (2005); see CrR 3.3(b)(5), (g). This is a case that highlights the reason for the buffer rule in general. It was important to the State to have Dr. Hodges testify as to his observation of Ms. Baker's injuries, the fact that her bruises and abrasions were consistent with the timeline of events, and the fact that physical injuries on the body are not always seen in strangulation cases.

The Defendant's counsel concedes in his brief that the court acted properly here, did not violate his client's right to speedy trial, and that the January 9, 2013 trial date was within the 30 day buffer period. (Brief of Appellant at 8). The State agrees and respectfully asks this Court to find that the Defendant's right to speedy trial was not violated pursuant to CrR 3.3.

B. VIEWING THE EVIDENCE IN THE LIGHT MOST FAVORABLE TO THE STATE, THE EVIDENCE PRESENTED AT TRIAL WAS SUFFICIENT TO SUPPORT THE CONVICTIONS BEYOND A REASONABLE DOUBT.

The Defendant challenges the evidence for the Rape in the Second Degree and Assault in the Second Degree with Sexual

Motivation convictions. (Brief of Appellant at 9-10). The evidence presented at trial is sufficient for both convictions to be upheld.

The standard for a challenge to the sufficiency of the evidence is whether, after viewing all the evidence in the light most favorable to the State, any rational trier of fact could have found the facts beyond a reasonable doubt. State v. Hepton, 113 Wn. App. 673, 681, 54 P.3d 233 (2002); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); Jackson v. Virginia, 443 U.S. 307, 319, 99 S.Ct. 2781 (1979); State v. Green, 94 Wn.2d 216, 220-21, 616 P.2d 628 (1980). The standard admits the truth of the state's evidence and all inferences that can reasonably be drawn from this evidence in the state's favor and interpreted most strongly against the defendant. State v. Hepton, 113 Wn. App. at 681; State v. Schelin, 147 Wn.2d 562, 573, 55 P.2d 632 (2002); Jackson v. Virginia, 443 U.S. at 319, 99 S.Ct. at 2789.

Ms. Baker testified that she was picked up at 7/11 and that the Defendant—who was seated in the back seat with her—told her to “go . . . and inform [her] friends . . . that [she's] just been raped by J.K.” (J.K. being the name she knew him by). (1/9/13 RP 102-103). She recounted that after they arrived, she was led to the back bedroom of an apartment, informed or instructed to take off all

her clothing, including undergarments. (1/9/13 RP 104). She described seeing three butcher knives placed randomly throughout the room. (Id. at 104). An allegation that was corroborated by Ms. Hash (1/10/13 RP 225), and corroborated to Detective Greenhalgh but then denied during the testimonies of Mr. Murphy (Id. at 197) and the Defendant. (Id. at 284).

Over the course of approximately fifteen hours (Id. at 112), the Defendant raped Ms. Baker four or five times. (Id. at 108). Whenever the Defendant saw fear in Ms. Baker's face, or when she tried to resist something, there was a physical and violent consequence for it. (Id. at 107). The Defendant would demand that Ms. Baker call him daddy or master, and if she tried to resist, he would strangle her by pressing her to the bed and blocking her airway. (Id. at 108). He used a lot of force while strangling her, and was sexually aroused while doing so as evidenced by an erection. (Id. at 110-111). Ms. Baker was brutalized—the Defendant hit her (Id. at 107), strangled her (Id. at 108), bit her (Id. at 109), punched her (Id. at 109), pulled her hair (Id.), and raped her repeatedly. (Id. at 107, 108, 111). Ms. Baker was bruised from her knees to her neck. (Id. at 109). Her injuries in the form of bruising to her neck, chest, and legs were visible four days after the assault when she

was seen in the E.R. by Officer Haworth and Dr. Hodges. (Id. at 87; 1/10/13 RP 170, 172).

The jury heard evidence that Ms. Baker had picked the Defendant out of a photo lineup (1/9/13 RP 120-121) and saw Ms. Baker in court physically identify the Defendant as the man who had raped her and caused her injuries. (Id. at 100). The jury was made aware that the Defendant had been convicted of two prior crimes of dishonesty (1/10/13 at 277-278) had the occasion to observe and hear the testimony of the Defendant as he repeatedly contradicted his prior statement to Detective Greenhalgh in very notable and significant ways. He denied in his testimony telling the detective that he had placed knives throughout the room. (1/10/13 RP 283). He denied telling the detective that he had sexual intercourse with Ms. Baker. (Id. at 280-281). He testified that the reason he picked Ms. Baker up that night was to have sex with her, but then claimed they did not have sex. (Id. at 280). Ms. Baker's testimony, as compared and contrasted to the Defendant's, was enough information for the jury to decide this case without resorting to guess, conjecture, or speculation.

Ms. Baker did not have a personal cell phone with her that night, so she did not immediately call the police. (1/9/13 RP 108, 133). She did not try to escape or call out for help. (Id.). It is easy for us to second-guess the actions or inactions Ms. Baker took in not putting up more of a resistance, but in her mind, she feared that the knives throughout the room would be used against her. (Id.). She felt “overruled” by the Defendant and his friends (Id. at 106) and felt as though she was not free to leave. (Id. at 139). She feared being strangled again by the Defendant. (Id. at 133). In this case, the jury heard Ms. Baker’s testimony and was able to observe her during lengthy direct and cross examinations. Ms. Baker did what she felt she had to do to maintain her safety. (Id. at 142-143). Though her choices and mindset might not have been the same as the members of the jury, her actions or inactions in no way negate her testimony of what the Defendant did to her. Viewing all the evidence in the light most favorable to the State, a rational finder of fact could have convicted the Defendant of Rape in the Second Degree and Assault in the Second Degree with Sexual Motivation beyond a reasonable doubt.

Walla Walla, WA 99362 by depositing in the mail of the United States of America a properly stamped and addressed envelope and to Kenneth H. Kato, opposing counsel, khkato@comcast.net by email per agreement of the parties pursuant to GR30(b)(4).



Signed and sworn to before me this 22nd day of September, 2014.



Notary Public in and for
the State of Washington,
residing at Pasco.
My appointment expires:
September 9, 2018.