IN THE SUPERIOR COURT OF FAYETTE COUNTY
STATE OF GEORGIA

STATE OF GEORGIA, *
*
v. * Case Number 2012R-0016
*
WILLIAM JEFFREY DUMAS, *
*
Defendant. *

ORDER ON MOTION FOR NEW TRIAL

Defendant's Motion for New Trial, as amended, has been read and considered and was heard in open court on January 7, 2014. The court finds that, while the evidence was sufficient to sustain his convictions under *Jackson v. Virginia*, 443 U.S. 307 (99 SCt 2781, 61 LEd2d 560) (1979), those convictions are contrary to "the principles of justice and equity" and "decidedly and strongly against the weight of the evidence." The motion is therefore granted pursuant to the general grounds set out at OCGA §§ 5-5-20 and 5-5-21.

Findings of Fact

On October 18, 2010 [redacted], a 24-years-old with Down syndrome, was staying at the home shared by Christie Prince and Robert Barton because [redacted] mother and her mother's husband were working in Chattanooga. At around 6:30-7:00 that evening, defendant Jeffrey Dumas, a long-time friend of Mr. Barton

who often spent time at the Prince/Barton home, arrived. Although Mr. Dumas was already intoxicated, he and Mr. Barton made a run to the liquor store. Then, until about 10:00 Mr. Dumas, [redacted] Ms. Prince, and Mr. Barton spent the evening in the living room: they watched television; Mr. Barton played games on his laptop computer; and Mr. Dumas and Ms. Prince played cards. At about 10:00 Mr. Barton went to bed, leaving the others watching television in the living room. Prior to 11:30, Ms. Prince testified, she had not left Mr. Dumas and [redacted] alone.

At 11:30 Ms. Prince, who had gone out to the porch to smoke, heard a crash coming from the computer room. She testified that she went in to investigate as quickly as she could upon hearing the crash and found Mr. Dumas and [redacted] walking out of the room, engaged in ordinary conversation, neither of them disheveled or visibly distressed. She further testified that [redacted] and Mr. Dumas reported to her that the crash had occurred when Mr. Dumas tripped over a chair. In contrast, [redacted] testified that ten or twenty minutes passed between the time of the crash and Ms. Prince's arrival to investigate it. And, although she made no outcry until the following afternoon, [redacted] also testified that Mr. Dumas had been raping her on a tall bar chair and that the crash occurred when they both fell off the chair. Mr. Dumas was convicted of rape as to this incident.

Ms. Prince testified that she put [redacted] to bed at 12:30 or 12:45 that night, in a basement bedroom, which [redacted] sometimes called her apartment. T.312. ([redacted] testified that she put herself to bed.) By this time, Mr. Dumas had passed out on the couch in the living room. Although Ms. Prince's testimony does not account explicitly for the time between the crash at 11:30 and when she put [redacted] to bed, the clear implication of her testimony, taken as a whole, is that she did not leave [redacted] and Mr. Dumas alone during that time. Nevertheless, [redacted] testified that at an unspecified time that evening, while she and Mr. Dumas were watching television in the living room, Mr. Dumas sodomized her and raped her another time. Again [redacted] made no outcry until the following afternoon. Mr. Dumas was charged and convicted for aggravated assault as to this incident, but was not charged with rape.

On the morning of October 19, Mr. Barton got up at 6:45, went through the living room on his way to get clothes out of the drier, woke Mr. Dumas, called down to [redacted] directing her to let the dogs outside, and then went into the upstairs bathroom. While Mr. Barton was in the upstairs bathroom Mr. Dumas called out to ask if that bathroom was occupied and then appeared to head to the bathroom in the basement. When Mr. Barton finished his bath and came downstairs he found Mr. Dumas putting on his boots and the two men left for

work together.

[redacted] testified that Mr. Dumas had raped her a third time while she was in the basement bedroom. She reported, inconsistently, in her statement to the Detective Shelton, which was introduced at trial, that this occurred early or at 10:00 the next morning. Again [redacted] made no outcry until the following afternoon. Mr. Dumas was convicted of a second count of rape as to this incident.

After Mr. Barton and Mr. Dumas left for work, Ms. Prince and [redacted] spent the morning together. They watched *That 70s Show*, which [redacted] enjoyed.

Late that morning Mr. Dumas called to say he was coming back. There is no evidence that [redacted] exhibited visible distress when that call came or at any time that morning. When he arrived and announced an intention to go to the liquor store, [redacted] asked to ride along. Ms. Prince refused permission, as Mr. Dumas had again been drinking. The three of them spent the afternoon together. They sat on the porch and watched television. Mr. Dumas spent much of the day sleeping.

Then at 4:15, as Mr. Barton was about to arrive home, [redacted] made her initial outcry. She told Ms. Prince that Mr. Dumas had tried to pull her panties down. Ms. Prince testified that, in her response,

> I came off pretty strong. I said, ["]what do you mean.["] And

she told me, she just said, ["]oh, I'm just kidding.["] . . .

I said, ["[redacted] you know, you've got to tell me the truth.["] And she said, ["]okay, well, he did.["]

So we went in and confronted Jeff. He said, ["]I haven't touched that girl; I'm leaving.["] And he left from my home.

T.276.

Ms. Prince then phoned [redacted] mother, Vicki Bailey. Ms. Bailey and her husband drove back from Chattanooga when they got off work, arriving at 2:00 in the morning. They awoke [redacted] and, according to Ms. Bailey,

We tried talking to her then, but all – me, my husband and Christie all were throwing questions at [redacted] and no one was giving her time to finish her answer before another one of us was throwing her a question. And so finally, I just said, ["][redacted], come on, let's go; we'll go home and we'll get you to bed.["]

T.224. Once [redacted] was in the truck with Ms. Bailey, and while Ms. Bailey's husband was still in the Prince/Barton home, Ms. Bailey questioned her daughter again. [redacted] then reiterated her outcry.

A police investigation followed. DNA testing turned up Mr. Dumas's semen on the sheets in the basement bedroom where [redacted] had been sleeping. A pelvic examination disclosed tenderness and reddening that was "consistent with

forcible intercourse" but also consistent with other explanations which could exclude forcible intercourse. T.253, 256. Mr. Dumas gave a statement in which he denied sexual contact with [redacted] and in which he made charges, which not substantiated at trial (but as to which some substantiation was introduced at the new-trial hearing) to the effect that [redacted] had made false allegations in the past.

Conclusions of Law

The evidence is sufficient to sustain the convictions. See *Jackson v. Virginia*, 443 U.S. 307, 99 S.Ct. 2781, 61 L.Ed.2d 560 (1979). [redacted] testified to the elements of the two charged rapes and the aggravated sodomy charge. See OCGA §§ 16-6-1; 16-6-2. Albeit, her testimony as to lack of consent and force was conclusory and skeletal.

But as Mr. Dumas has raised the general grounds, the analysis does not end with the determination that the evidence is sufficient.

> Even when the evidence is legally sufficient to sustain a conviction, a trial judge may grant a new trial if the verdict of the jury is "contrary to . . . the principles of justice and equity," OCGA § 5-5-20, or if the verdict is "decidedly and strongly against the weight of the evidence." OCGA § 5-5-21. When properly raised in a timely motion, these grounds for a new trial – commonly known as the "general grounds" – require the trial judge to exercise a "broad discretion to sit as a

'thirteenth juror.'" *Walker v. State*, 292 Ga. 262, 264 (2) (737 SE2d 311) (2013). In exercising that discretion, the trial judge must consider some of the things that []he cannot when assessing the legal sufficiency of the evidence, including any conflicts in the evidence, the credibility of witnesses, and the weight of the evidence. See *Choisnet v. State*, 292 Ga. 860, 861 (742 SE2d 476) (2013). Although the discretion of a trial judge to award a new trial on the general grounds is not boundless – it is, after all, a discretion that "should be exercised with caution (and) invoked only in exceptional cases in which the evidence preponderates heavily against the verdict," *Alvelo v. State*, 288 Ga. 437, 438 (1) (704 SE2d 787) (2001) (citations and punctuation omitted) – it nevertheless is, generally speaking, a substantial discretion. See *State v. Harris*, 292 Ga. 92, 94 (734 SE2d 357) (2012).

White v. State, 293 Ga. 523, 524-525 (2) (__ SE2d __) (2013) (footnote omitted).

Here the evidence at trial left the court in doubt. The court's concerns largely coincide with the central defense argument. [redacted] testified that, in a twelve-hour period, Mr. Dumas raped her three times, combining one of those rapes with aggravated sodomy; that he did so while the two of them were in a modest-sized house along with two responsible adults who were charged with protecting her; and that those attacks were interspersed with periods when she interacted with those protectors and had ample opportunity to ask for their help. [redacted] did not make any outcry during this period. At no time prior to

her outcry on the afternoon of the 19th did [redacted] behave like a victim. Nor did Mr. Dumas behave like someone who had recently perpetrated a series of violent crimes against her. It is true, as the state pointed out in closing argument, that there is no manual dictating how one must behave in such circumstances. But it requires more than that bald argument to satisfy this court that it should ignore the fact that, until the outcry, neither of them showed any fear, guilt, or inclination to retreat to a place of safety. There is only the most conclusory and skeletal testimony of any effort by Mr. Dumas to discourage [redacted] from appealing to Ms. Prince and Mr. Barton for protection. And shortly before her outcry [redacted] asked to ride with Mr. Dumas in his truck. For his part Mr. Dumas spent much of the afternoon leading up to her outcry asleep in the presence of [redacted] and the woman who had assumed primary responsibility for protecting her.

The state's principal argument as to this difficulty with its case is that [redacted] was uncertain whether or not she could rely on Ms. Prince for protection. See T.396 (arguing as to the initial outcry, "She was testing the waters."). But there is no evidence of any such uncertainty. All of the evidence as to the relationship between Ms. Prince and [redacted] – as well as the court's observations of Ms. Prince – point strongly in the opposite direction.

This difficulty with the state's case might be reconciled on the basis that

[redacted] needed time to process what had happened to her, as is often the case with small children who have been victimized in this way. But notwithstanding the state's characterization of her as a child, she was in fact a 24-year-old woman. The only evidence that directly addressed the severity of [redacted] symptoms was her mother's testimony when asked by the District Attorney to describe [redacted] mental age:

> It depends on the area you're talking about. Socially [redacted] is – I would say, is close to her age that she is; academically, she is slower; but as far as sitting and carrying on a conversation with you and knowing what she's saying and talking about, she is her age.

T.219. Although [redacted] testified and the court found her competent to testify, the court is not prepared to reach a more precise assessment of her symptoms on the basis of her demeanor in that very unusual and stressful situation.

The evidence regarding the questioning that ensued after [redacted] initial outcry suggests that this questioning – despite the best intentions of her questioners – may have placed undue pressure on her. Ms. Prince acknowledged that she "came off pretty strong" in her initial response to [redacted] statement that Mr. Dumas tried to pull down her panties. [redacted] was later awakened at 2:00 in the morning and intensively questioned by persons upon whom she is dependent.

Contrary to the state's argument that [redacted] could have easily "stopped it all by simply saying, it didn't happen, just kidding," T.397, she had in fact, as the state acknowledged, tried exactly that. "I'm just kidding" was her first reaction to Ms. Prince's strong response to her initial outcry. Once she made her disclosure, the process immediately began to gain momentum, which would have made recanting more and more difficult.

And the court is concerned by certain improbabilities and discrepancies in [redacted] testimony. The description of the rape in the computer room is problematic in several respects. As the state acknowledged in closing, there is a discrepancy between [redacted] testimony and her statement to the investigator as to whether it took place on an elevated bar chair or on a rolling task chair. In its closing the state argued that the jury should blame that mistake on the prosecution, rather than [redacted], but it cited no evidence to support that argument. More fundamentally, having examined Exhibit D-1, the photograph showing those pieces of furniture, the court doubts that the conduct charged could have been accomplished on either.

And there is a more serious discrepancy between Ms. Prince's testimony that she came upstairs immediately when she heard the crash in the computer room and [redacted] testimony that it took ten or twenty minutes for Ms. Prince to

arrive. This discrepancy is particularly troubling because, the court finds, [redacted] testimony is improbable, and it purports to explain away Ms. Prince's testimony that she found [redacted] and Mr. Dumas neither disheveled nor visibly distressed.

As noted above, the evidence as to the rape in the living room is also troubling because the court is unable to identify a time when it could have occurred. Apart from the time after Mr. Barton had gone to bed and while Ms. Prince was outside smoking, when the incident in the computer room took place, the testimony of Ms. Prince and Mr. Barton strongly suggests that there was no time on the 18th when Mr. Dumas and Ms. Prince were alone together.

None of this, however, is dispositive. The observations above are generally in the nature of concerns and possible inferences. And the description of the trial judge as the thirteenth juror is a metaphor. The court did not participate in the jury's deliberations, and none of the observations set out in the preceding pages are beyond the ken of the jury. As noted above, "the discretion of a trial judge to award a new trial on the general grounds is not boundless – it is, after all, a discretion that should be exercised with caution and invoked only in exceptional cases in which the evidence preponderates heavily against the verdict." *White*, supra, 293 Ga. at 524-525 (2) (citation and punctuation omitted).

The court therefore turns to the closing arguments of counsel and the circumstances of the trial. But the state's closing did little to address the concerns set out above. As to the problems with the logistics of the computer room rape the state offered a conclusory dismissal of the issue.

The state elected to waive opening and reserve closing. Consequently, "even though the state ha[d] the burden of proof . . . the defendant w[as] required to respond to an argument he has not yet heard." See *Warren v. State*, 281 Ga. App. 490 (636 SE2d 671) (2006). The state used that advantage to make two arguments that could not withstand rebuttal.

First, as to Dr. Robin Louman's testimony about the pelvic examination, the state argued that the evidence of tenderness and reddening was "one of the star witnesses in the case. This injury tells you all you need to know." T.408. Dr. Louman did testify that her findings were consistent with forcible rape, but she did not testify that her findings were proof of forcible rape. On the contrary, she readily acknowledged on cross examination that her findings also were also consistent with other explanations which could exclude forcible intercourse. So, while it is fair to say that this evidence corroborated the testimony that penetration occurred during the twelve-hour period in question, the state's argument greatly overstated the significance of Dr. Louman's testimony. And rather than question

Dr. Louman about the significance of her findings, the state elicited from its investigator testimony that "in all the years he's been doing this, he has never, ever been able to have the physical corroboration of an injury in a rape case in any sex offender case." T.407 (closing argument). The court finds the state's reliance on the testimony of its investigator, rather than the doctor herself, to establish the significance of that evidence frankly too clever by half.

Second, the state argued at length about a request by Mr. Dumas that Ms. Prince wash his work shirt. The state argued that this request "tells us volumes about this man" and that it evidenced that Mr. Dumas saw Ms. Prince "as an object," which was "the way a rapist thinks, particularly when he's drunk." T.400. The state's argument is a non sequitor. There was no evidence that the request was made in a disrespectful way. It is true that the request was unusual. But the welcome formerly extended to Mr. Dumas in the Prince/Barton home was unusual in many respects. And a request to add one more item to a load of laundry might well have been, under the totality of the circumstances, a modest imposition. And again, the state did not ask Ms. Prince if she felt objectified by this request. Instead the state again invited its investigator to comment on the significance of evidence about which a more impartial witness was much more knowledgeable.

The court notes that at this point in his closing the District Attorney began

to raise his voice. The court concludes that this argument was less an appeal to the jury's reason than a chord change, a transition from analyzing the evidence to demonizing the defendant and appealing to the jury's emotions rather than its intellect.

This emotional appeal may have been unduly prejudicial because the nature of the charges engendered an emotional intensity, apparent to the court during the jury selection process, that never dissipated. That emotional intensity might have interfered with the jury's ability to address the concerns set out above.

"Before a verdict becomes final it should, where the losing party requires it by a motion for new trial, receive the approval of the mind and conscience of the trial judge . . . [Cit.]." *Atkinson v. State*, 170 Ga. App. 260, 261 (1) (316 SE2d 592) (1984) (citation and punctuation omitted). For the reasons set out above, these convictions do not have the approval of this court's mind and conscience. The court therefore finds that the convictions are contrary to "the principles of justice and equity" and "decidedly and strongly against the weight of the evidence" and therefore, pursuant to OCGA §§ 5-5-20 and 5-5-21, that the motion for new trial should be granted.

The remaining special grounds are pretermitted.

The Motion for New Trial is GRANTED.

This 7 day of Jan., 2014.

Judge Christopher J. McFadden
Superior Court of Fayette County
Sitting by Designation

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CERTIFICATE OF SERVICE

This is to certify that I have this date served a copy of the foregoing Order on Motion for New Trial upon all counsel listed below, **via email** and by depositing the same in the U.S. Mail with adequate posted affixed thereto.

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This 8th day of January, 2014.

Judicial Assistant