State v. Nelson

129 Wash.App. 1037 (2005) | Cited 0 times | Court of Appeals of Washington | September 27, 2005

JUDGES: Concurring: Christine Quinn-Brintnall Elaine Houghton

UNPUBLISHED OPINION

David Marshall Nelson appeals a conviction for second degree rape committed with forcible compulsion. He alleges that the evidence is insufficient and that his trial attorney was ineffective. We affirm.

On December 15, 2002, Nelson was incarcerated in the Pierce County Jail. He was 46 years old and weighed 282 pounds.

On January 31, 2003, the jail placed Nelson in a two-person cell with Matthew Allen Moser. Moser was 17 years old, weighed 140 pounds, had completed the eighth grade and was in special education classes.

On the night of February 4, 2003, according to Moser's direct testimony at trial, Nelson forcibly and anally raped him. Moser struggled but did not scream or yell for help; he was scared, as Nelson 'was right there' and 'could have done anything.'[1] During the next day or two, Moser made various statements to, and was observed by, jailers, a detective, and medical personnel. He was found to have internal and external swelling of his anus, and, according to the parties' stipulation, Nelson's DNA in his anus.

The State charged Nelson with second degree rape, the court found Nelson competent to stand trial, and the case proceeded to trial before a jury. Moser testified unclearly about whether he and Nelson had had sexual contact before the charged occasion. He said that he was 'mentally slow,'[2] that he did not understand all the questions, and that he had filed a five million dollar claim against Pierce County because of this incident. The jury found Nelson guilty, and the court sentenced him as a persistent offender.

I.

Nelson argues that the evidence is insufficient to support the verdict. He reasons that the State's evidence was 'equivocal, contradictory, inconsistent, ambiguous, and mutually antagonistic.'[3]

Evidence is sufficient if a rational trier of fact taking it in the light most favorable to the State could

find each element of the crime beyond a reasonable doubt.[4] The trier of fact resolves inconsistencies in the testimony and issues of credibility.[5] Evidence is sufficient to show second degree rape if, taken in the light most favorable to the State, it shows that the defendant forcibly compelled the victim to engage in sexual intercourse.[6]

Moser directly testified that he was forcibly and anally raped. It was the jury's responsibility to weigh his credibility, including any inconsistencies therein, statements he had given police and investigators, his demeanor in interviews and on the night of the alleged rape, his failure to report the rape immediately, his lack of clarity about whether he and Nelson had previously had sexual contact, and any bias he might have due to his lawsuit against the County. A rational jury taking the evidence in the light most favorable to the State could find each element of the crime, and hence the evidence is sufficient.[7]

II.

Pro se, Nelson argues that he is mentally ill and his trial attorney was ineffective by not bringing that to light. The record on appeal, however, does not show either deficient representation or prejudice.[8] On the contrary, it shows only that the trial court found Nelson competent to stand trial.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Morgan, J.

We concur:

Houghton, J.

Quinn-Brintnall, C.J.

1. Report of Proceedings (RP) at 150.

2. RP at 198.

3. Br. of Appellant at 27.

4. State v. Joy, 121 Wn.2d 333, 338, 851 P.2d 654 (1993); State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992); State v. Nicholson, 119 Wn. App. 855, 859, 84 P.3d 877 (2003).

5. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990); State v. Hanson, 126 Wn. App. 276, 280-81, 108 P.3d 177 (2005); see State v. Trout, 125 Wn. App. 403, 409, 105 P.3d 69 (2005) (appellate court defers to jury's 'resolution of conflicting testimony, evaluation of witness credibility, and generally its view of the persuasiveness of the evidence.').

6. RCW 9A.44.050; see State v. Soderquist, 63 Wn. App. 144, 148, 816 P.2d 1264 (1991) (quoting State v. McKnight, 54 Wn. App. 521, 527-28, 774 P.2d 532 (1989)) (evidence sufficient to show second degree rape if it shows 'that the force exerted was directed at overcoming the victim's resistance and was more than that which is normally required to achieve penetration').

7. Although Nelson relies on State v. DeVries, 149 Wn.2d 842, 72 P.3d 748 (2003), State v. Akers, 88 Wn. App. 891; 946 P.2d 1222 (1998), and State v. Robbins, 68 Wn. App. 873, 846 P.2d 585 (1993), we do not think that any of those cases controls here.

8. See State v. Saunders, 120 Wn. App. 800, 819, 86 P.3d 232 (2004).