

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 4, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2008AP226-CR

Cir. Ct. No. 2004CF553

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSE C. CASTILLO,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Walworth County: JAMES L. CARLSON, Judge. *Affirmed.*

Before Brown, C.J., Anderson, P.J., and Neubauer, J.

¶1 PER CURIAM. Jose Castillo appeals from a judgment convicting him of two counts of repeated first-degree sexual assault of the same children

under thirteen years, Y.C. and D.C.,¹ and first-degree sexual assault of D.C.,² and from the order denying his postconviction motion. On appeal, Castillo argues that the evidence was insufficient to convict him and that the victims' testimony was incredible and should have been disregarded by the jury. We disagree and affirm.

¶2 At trial, D.C. testified that Castillo touched her sexually and performed oral sex upon her when she was six or seven years old. D.C. related other incidents of sexual contact occurring thereafter, including sexual intercourse on numerous occasions. The abuse stopped when she was fourteen or fifteen years old. D.C. became very upset when she learned that Castillo had tried to touch Y.C. sexually. D.C. spoke with a college counselor about the sexual abuse. The counselor informed the police and human services.

¶3 D.C. was closely cross-examined on topics that included conflict and discord among individuals with a connection to Castillo and D.C. and D.C.'s feelings of estrangement. D.C. spoke with Detective Bilskey about sexual abuse in November 2004, the same month that Y.C. spoke with the detective. D.C. felt that her mother and brother were trying to dissuade her from reporting the abuse in November 2004.

¶4 At trial, Y.C. recanted her accusations of sexual abuse and testified that Castillo never touched her inappropriately. She was then impeached with her preliminary examination testimony in which she stated that Castillo touched her

¹ The assaults against Y.C. were alleged to have occurred between January 1993 and September 2001. The assaults against D.C. were alleged to have occurred between April 1992 and October 1999.

² This assault was alleged to have occurred between September 1991 and March 1992.

sexually. Y.C. disavowed her preliminary examination testimony as not truthful. While Y.C. conceded that she told a detective and a county human services worker about the sexual abuse in November 2004, she variously stated that she did not remember the statements she allegedly made to the detective and the worker or that the sexual abuse she described to them was untrue. Y.C. intimated that family members pressured her to recant. Y.C. denied that she told her best friend about the sexual abuse four to five years before she told the detective. However, she admitted telling the detective that she had confided in her best friend.

¶5 On close cross-examination, Y.C. denied being pressured to deny the sexual abuse. On redirect, she testified that her brother told her that if she wanted to go to college, she would deny the abuse and drop the charges.

¶6 At trial, Detective Bilskey related Y.C.'s detailed statements to him about sexual abuse by Castillo.

¶7 As part of the defense's case, a witness testified that he shared a house with Castillo, and he never observed any inappropriate conduct between Castillo and either Y.C. or D.C. Another witness, the brother of Y.C. and D.C., testified that he never observed any inappropriate conduct between Castillo and either Y.C. or D.C. He denied threatening the victims or pressuring them to drop the charges. He confirmed Y.C.'s and D.C.'s testimony that Castillo would go on drinking binges.

¶8 In closing, the State argued that Y.C.'s recantation was not truthful, and that the jury could tell from her demeanor that she was not being truthful at trial when she denied that the abuse occurred or that she was not pressured to deny the abuse. The State challenged as incredible the brother's contention that no sexual abuse occurred because he never saw it happen.

¶9 Castillo’s closing argument focused on the problems in Y.C.’s and D.C.’s testimony and suggested that they fabricated their sexual abuse allegations. Castillo also argued that the proof of sexual abuse was lacking in specificity with regard to dates and times. The jury convicted Castillo.

¶10 Postconviction, Castillo sought a new trial due to ineffective assistance of trial counsel and insufficient evidence. Castillo withdrew his ineffective assistance motion; the circuit court concluded that the evidence was sufficient.

¶11 We will sustain the verdict “unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.” *State v. Zimmerman*, 2003 WI App 196, ¶24, 266 Wis. 2d 1003, 669 N.W.2d 762 (citation omitted). The credibility of the witnesses, the weight of their testimony, and the drawing of inferences are left to the jury. *Richards v. Mendivil*, 200 Wis. 2d 665, 671, 548 N.W.2d 85 (Ct. App. 1996).

¶12 On appeal, Castillo argues that the jury should have placed determinative weight on evidence of the conflict and discord which led Y.C. and D.C. to fabricate their claims, Y.C.’s recantation should have been accepted by the jury, the victims’ testimony was incredible, and other household members testified that they never witnessed any inappropriate contact between Castillo and the victims. Castillo also argues that D.C. had “psychiatric problems”³ which should have rendered her testimony incredible.

³ The alleged psychiatric problems were not the subject of any expert testimony.

¶13 The jury was free to evaluate and weigh all testimony, including Y.C.'s occasionally confusing, contradictory and evasive testimony. It was for the jury to resolve any discrepancies in the victims' accounts and to decide whether the sexual assaults occurred. Our review is limited to determining whether, if the jury believed the victims, their testimony was sufficient to prove each element of the charged crimes.⁴ Castillo does not identify any element of any count which he believes was not addressed by the victims' testimony. We are satisfied that the victims' descriptions of multiple sexual assaults by Castillo over a period of several years was sufficient to support each of the verdicts.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

⁴ The elements of first-degree sexual assault of a child are: Castillo had sexual contact or intercourse with Y.C. and D.C., and neither victim was thirteen years old at the time of the contact or intercourse. WIS. STAT. § 948.02(1) (2005-06). There was also evidence of repeated sexual contact and intercourse.

