Case No. 24-CF-7

District of Columbia
Court of Appeals

EDUARDO MALDONADO,

Appellant,

v.

UNITED STATES,

Appellee.

On Appeal from the Superior Court of the District of Columbia
Criminal Division
Case No. 2023-CF1-002066, The Honorable Judith Smith

APPELLANT EDUARDO MALDONADO'S REPLY BRIEF

James W. Kraus (DC Bar No. 471945)
KRAUS JENKINS PLLC
650 Massachusetts Avenue, NW
Suite 600
Washington, DC 20001
(202) 888-7681
jkraus@krausjenkins.com

Counsel for Appellant Eduardo Maldonado

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

ARGUMENT

The record before this Court and the finding of guilt against Mr. Maldonado are irreconcilable with the law's demand for proof beyond a reasonable doubt. Even in its most generous recitation of the facts, the government has failed to identify evidence from which a reasonable factfinder could find, beyond a reasonable doubt, that Mr. Maldonado knew or should have known he did not have A.R.'s consent for oral sex or sexual intercourse. To the contrary, A.R.'s word and actions—kissing, grinding, engaging in sexually charged discussions, and moving from location to location with Mr. Maldonado—were overt expressions that could reasonably lead an individual to believe he has consent for sexual contact.

While it is undeniably a misfortune that A.R. and Mr. Maldonado did not have a meeting of the minds, as Mr. Maldonado believed, the law does not impose liability for miscommunication or misunderstandings. Lacking evidence that Mr. Maldonado knew or should have known he did not have A.R.'s consent for their interactions, the trial court erred in finding Mr. Maldonado guilty on Counts I and II, necessitating reversal.

I. The trial court lacked sufficient evidence to conclude that Mr. Maldonado should have known he did not have A.R.'s consent to engage in oral sex.

The government fails to offer any evidence or explanation, other than the fact that A.R. did not *expressly state* her consent to oral sex on the church steps, to support the trial court's finding of guilt against Mr. Maldonado. *See generally* Gov't Br. at 17–20. The law, however, does not require such magic words. The only relevant question is whether Mr. Maldonado knew or should have known, based on A.R.'s words *or actions*, that he did not have her consent for oral sex. By the trial court's own account, there is evidence reflecting A.R.'s consent, meaning there is not proof beyond a reasonable doubt of Mr. Maldonado's guilt.

As the government correctly explains, consent can come in the form of "words" or "actions" that "indicat[e] a freely given agreement to the sexual act or contact in questions." D.C. Code § 22-3001(4). Here, the uncontroverted evidence demonstrates that over the course of hours, leading up to the minutes and seconds before the sexual act in question, A.R. and Mr. Maldonado were kissing, grinding, touching, and rubbing on one

another, during what A.R. described as a "fabulous" night. (Trial Tr. (10/31/2023) 57:17–64:5). In addition to A.R.'s undisputed actions, Mr. Maldonado also testified that he and A.R. were contemporaneously engaged in discussions regarding oral sex and finding a hotel. (Trial Tr. (11/1/2023) 29:22–30:1).

The government does not dispute A.R.'s actions or explain how, in light of this conduct, Mr. Maldonado knew or should have known he was lacking A.R.'s consent. Instead, the government summarily argues that these words and actions do not provide blanket authority for sexual conduct. *See* Gov't Br. at 18. But this summary argument does not respond to the government's burden. To be sure, engaging in sexual conduct in public may be ill-advised, but that alone does not take away from the words and actions that led Mr. Maldonado to believe A.R. was a free and willing participant in the conduct.

For the purposes of assessing criminal liability, this Court is concerned only with what Mr. Maldonado reasonably knew or should have known under the circumstances. Where, as here, A.R. voluntarily engaged in

prolonged sensual touching and explicit conversations with Mr. Maldonado, and then continued with Mr. Maldonado to a secluded location after the allegedly unwanted contact, the government has failed to provide proof, beyond a reasonable doubt, that Mr. Maldonado knew or should have known that he did not have A.R.'s consent to briefly engage in oral sex. The trial court erred in concluding otherwise.

In fact, the trial court acknowledged that the government had not provided proof beyond a reasonable doubt, acknowledging that the evidence of sexual abuse was "less clear" with respect to Count II. To sweep this acknowledgment under the rug, the government argues that trial courts are presumed to know the law and, specifically, that the standard for guilt is proof beyond a reasonable doubt. Gov't Br. at 19–20. A court's knowledge of the law and its correct application of the law, however, are two separate issues. In fact, every single appeal is premised on the assertion that the court below made an error. If the government's assertion were true—that this Court should affirm the trial court because the court is presumed to know the law—courts of appeals would have no purpose.

The fact of the matter is the trial court recognized the shortcomings in the government's case, and it acknowledge its skepticism, even if slight, regarding Mr. Maldonado's guilt. The trial court, "after careful and thoughtful reflect," expressed some "hesitat[ion]" regarding Mr. Maldonado's guilt. *Rivas v. United States*, 783 A.2d 125, 133 (D.C. 2001) (quoting *Smith*, 709 A.2d at 82. The court, therefore, erred in finding Mr. Maldonado guilty of Count II.

II. The trial court lacked sufficient evidence to find Mr. Maldonado guilty of sexual abuse by vaginal penetration beyond a reasonable doubt.

The government's case against Mr. Maldonado with respect to Count I relies on presumptions and speculations to draw inferences of guilt. Speculation, however, cannot support a finding of proof beyond a reasonable doubt.

Mr. Maldonado acknowledges that he and A.R. engaged in sexual intercourse, and he acknowledges that when he asked A.R. if she was okay with the interaction, she said "no." But as the video evidence depicts, when A.R. said "no," Mr. Maldonado stopped. (*See* Government's Exhibit 13). In

fact, as A.R.'s recording demonstrates, she originally provided an equivocal response to Mr. Maldonado's request for affirmative consent, prompting Mr. Maldonado to ask A.R. for a clear "yes or no." (*Id.*) Setting dangerous precedent, the trial court used Mr. Maldonado's request for consent against him, finding that "having to ask [for clarity] means that it was not clear" and that even though it "may not have been as clear that she wasn't consenting . . . he should have known." (Trial Tr. (12/12/2023) 26:16–27:7). To find Mr. Maldonado guilty of sexual assault because he asked for consent, pursued clear consent, and then stopped his actions when told "no" would work a substantial injustice against Mr. Maldonado, criminalize those who seek consent from their partners, and, ultimately, discourage the type of open and respectful communication imperative to protect against unwanted sexual encounters.

Likely recognizing the errors in the trial court's findings, the government does not respond to or engage with the court's explanation beyond a footnote. Instead, the government insists that Mr. Maldonado must have known he did not have consent because the second video, which was

filmed approximately ten minutes after A.R. said "no" arguably demonstrates the pair engaged in sexual intercourse and it "defies common sense" to believe A.R. "miraculously regained sobriety and voluntarily consented to sex during that 10-minute period." Gov't Br. at 20–22. The government's sarcasm reflects nothing more than speculation about what occurred in those ten minutes. *But see Swinton v. United States*, 902 A.2d 772, 776 n.6 (D.C. 2006) ("[G]aps in the evidence . . . are not to be filled by conjectures, guesses or assumptions."); *Washington v. United States*, 965 A.2d 35, 44 n. 29 (D.C. 2009) (emphasizing that a "gap [in evidence] alone can be enough to sustain a reasonable doubt").

Assuming, for the sake of argument, that Mr. Maldonado and A.R. did engage in sexual intercourse in the second video, the government's *only* evidence in support of its argument that Mr. Maldonado did so without consent is A.R.'s testimony that Mr. Maldonado engaged in sexual relations after she said "no." Gov't Br. at 21. The cited testimony, however, concerns the first video (Government's Exhibit 13), which, contrary to A.R.'s testimony, inarguably demonstrates Mr. Maldonado immediately ending

the sexual encounter upon A.R. saying, "no." (Trial Tr. (10/31/2023) 36:3–5). A.R. did not testify that she continued to withhold consent to Mr. Maldonado—or did not engage in any actions or communication that may have led Mr. Maldonado to believe he had consent—in the ten-minute interval between the two videos. The government, in fact, did not offer any evidence about what occurred during those ten minutes. Without more, it would be impossible for any reasonable factfinder to reach a conclusion about whether or not consent was provided—through either words or actions—without speculating and "filling in the gaps left by the government." *Hector v. United States*, 883 A.2d 129, 134 (D.C. 2005). Such gap-filling cannot support a guilty verdict.

Because the Government failed to offer any evidence about what occurred in the intervening ten minutes between the two videos, it is simply impossible to conclude, beyond a reasonable doubt, that Mr. Maldonado should have known he did not have A.R.'s consent. Therefore, Mr. Maldonado's conviction must be vacated with respect to Count I.

CONCLUSION

For the foregoing reasons, Mr. Maldonado respectfully requests that this Court vacate the trial court's judgment and sentence.

Respectfully submitted:

By: */s/ James W. Kraus*

James W. Kraus (DC Bar No. 471945)
KRAUS JENKINS PLLC
650 Massachusetts Avenue, NW
Suite 600
Washington, DC 20001
(202) 888-7681
jkraus@krausjenkins.com

Counsel for Appellant Eduardo Maldonado

Date: October 1, 2024

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of foregoing Reply Brief has sent via this Court's e-filing system to:

Chrisellen Kolb, Esquire
Chief, Appellate Division
United States Attorney's Office
601 D Street, NW
Washington, DC 20530-0034
Chrisellen.R.Kolb@usdoj.gov

By: /s/ James W. Kraus
JAMES W. KRAUS, ESQUIRE
KRAUS JENKINS PLLC
Counsel for Appellant Eduardo Maldonado

Date: October 1, 2024