

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN R. COOLEY,

Defendant-Appellant.

UNPUBLISHED

November 12, 1996

No. 182312

LC Nos. 93-122330

93-122331

93-122332

Before: Doctoroff, C.J., and Wahls and Smolenski, JJ.

PER CURIAM.

Defendant was initially charged in four separate cases with seven counts of criminal sexual conduct (CSC), second-degree, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), and one count of first-degree CSC, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). One count of second-degree CSC was dropped at the preliminary examination, and the remaining counts went to trial. Following a bench trial, defendant was convicted of five counts of assault and battery, MCL 750.81; MSA 28.276. The trial court sentenced him to twelve months' probation. Defendant appeals as of right. We affirm.

Defendant argues that there was insufficient evidence for a reasonable trier of fact to have found him guilty of assault and battery. He contends that if the trial court believed his testimony, he was guilty of no crime, and if the court believed the testimony of the complainant, he was guilty of criminal sexual conduct and not assault and battery. However, the trial court clearly believed some, but not all, of the complainant's testimony. See CJI2d 3.6(4). The complainant's testimony established that defendant touched her genital area on three separate occasions. In two of the three incidents, according to complainant, defendant also made her touch his penis. If believed, this testimony is sufficient to find defendant guilty of five counts of assault and battery.

Defendant improperly asks this Court to weigh the credibility of the witnesses, particularly that of the complainant, in analyzing the sufficiency of the evidence. When the trial judge sits as the finder of fact, he has the duty to weigh the testimony and assess the credibility of witnesses. *People v Snell*, 118

Mich App 750, 755; 325 NW2d 563 (1982). The trial judge in this case exercised that duty, as demonstrated by his differentiating the evidence of the four cases and acquitting defendant of the charges resulting from the fourth incident. When there is conflicting testimony, it is for the trial court to resolve the facts, and the trial court's resolutions should be given deference by this Court. *People v Shields*, 200 Mich App 554, 558; 504 NW2d 711 (1993).

Defendant's argument that the trial court rendered inconsistent verdicts is without merit. Inconsistent verdicts in jury trials are permissible in Michigan. *People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980); *People v Russell*, 190 Mich App 722, 724; 476 NW2d 504 (1991). However, this tolerance does not apply when the judge is the trier of fact. *Vaughn, supra*, p 466; *Wayne Co Pros v Recorder's Ct Judge*, 177 Mich App 762, 765; 442 NW2d 771 (1989). Here, the trial court chose to believe the complainant's testimony that assaults had occurred to support five of the eight original counts. However, an assault must be committed for "a sexual purpose" in order to support a conviction a conviction of second-degree CSC. *People v VanderVliet*, 444 Mich 52, 85; 508 NW2d 114 (1993). Because the elements of second-degree CSC and assault and battery differ, there was no inconsistency in the trial court's verdict. See *Vaughn, supra*, p 467.

Finally, although the trial court's findings were brief, they established that it was aware of the relevant issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). It would not facilitate appellate review in this case to remand for further articulation of facts. See *People v Johnson (On Rehearing)*, 208 Mich App 137, 141-142; 526 NW2d 617 (1994).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Myron H. Wahls

/s/ Michael R. Smolenski