

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRELL LIPSON,

Defendant-Appellant.

UNPUBLISHED

March 4, 1997

No. 191144

Detroit Recorder's Court

LC No. 94-009181

Before: Cavanagh, P.J., and Gage and D.A. Burrell, * JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions for criminal sexual conduct, first degree, MCL 750.520(b)(1)(c); MSA 28.788(2)(1)(c), and breaking and entering an occupied dwelling with the intent to commit a felony therein, MCL 750.110; MSA 28.305. Defendant was sentenced to serve five to fifteen years in prison on each count, the sentences to run concurrently. We affirm.

Defendant argues that the evidence presented at trial was insufficient to convict him on either count. Specifically, defendant argues that there was insufficient evidence to prove that he was the person who committed the crimes charged. We disagree.

When reviewing a claim of insufficient evidence following a bench trial, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). The evidence presented at trial was sufficient to justify the trier of fact in concluding that the elements of the charged offenses were proven beyond a reasonable doubt. The evidence established that someone entered the home of the victim on the morning of June 21, 1994. The entry was accomplished by removing a padlock from a security gate on the kitchen window. The intruder then opened the gate, displaced a window air conditioner, and climbed through the opening. Once inside, he went to the victim's bedroom and told the victim that he

* Circuit judge, sitting on the Court of Appeals by assignment.

just wanted to make love to her. Nonconsensual intercourse followed. Defendant does not seriously challenge the conclusion of the trial judge that those facts could justify the conclusion that someone was guilty of the charged offenses beyond a reasonable doubt.

Rather, defendant challenges the sufficiency of the identification evidence which was presented at trial. Specifically, defendant claims that the victim was mistaken when she picked him out of a line-up, identified him in court, and testified that he was her assailant. A claim of mistaken identification by a witness is a matter of credibility. *People v Boynton*, 46 Mich App 748, 749; 208 NW2d 523 (1973). Determinations of credibility are within the province of the trier of fact. *People v Taylor*, 185 Mich App 1, 8; 460 NW2d 582 (1990). This Court does not review issues of credibility anew. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990).

The identification evidence presented, if believed, was clearly sufficient to convict defendant beyond a reasonable doubt. The victim spoke with defendant immediately before the rape and was in his presence for a considerable amount of time. The victim testified that defendant told her his first name and that he lived a few houses down the street. The victim positively identified defendant at a line-up and in open court. The trier of fact believed the testimony of the victim. It is inappropriate for this Court to assess the credibility of evidence sufficient to convict a defendant beyond a reasonable doubt.

Defendant alternatively argues that the evidence was insufficient to establish criminal sexual conduct, first degree, and at most established criminal sexual conduct, second degree. We disagree. A defendant may be convicted of criminal sexual conduct, first degree, if the defendant engaged in unauthorized sexual penetration during the commission of another felony. MCL 750.520b(1)(c); MSA 28.788(2)(1)(c). Because defendant was also convicted of breaking and entering an occupied dwelling with the intent to engage in criminal sexual conduct, MCL 750.110; MSA 28.305, which is a felony, he was properly convicted of first-degree criminal sexual conduct.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Hilda R. Gage
/s/ Daniel A. Burress