

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY LEONARD PROFROCK,

Defendant-Appellant.

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UNPUBLISHED

February 20, 1998

No. 197756

Grand Traverse Circuit Court

LC No. 95-006896

Before: Hood, P.J., and McDonald and White, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of criminal sexual conduct in the third degree (CSC III), MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). He was sentenced to five to fifteen years in prison. Defendant appeals as of right. We affirm.

Defendant argues that there was insufficient evidence to convict him because the complainant's testimony was not credible and was contradicted. In reviewing this claim, this Court must view the evidence in a light most favorable to the prosecutor and determine whether there was sufficient evidence to allow a rational trier of fact to find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 513-516; 489 NW2d 748, modified on other grounds 441 Mich 1201-1202 (1992).

The essential elements of the crime of CSC III are: (1) sexual penetration; and (2) the use of force or coercion to accomplish the sexual penetration. MCL 750.520d(1)(b); MSA 28.788(4)(1)(b); *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). Force or coercion is defined as:

- (i) When the actor overcomes the victim through the actual application of physical force or physical violence.
- (ii) When the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute these threats. [MCL 750.520b(1)(f); MSA 28.788(2)(1)(f).]

It is undisputed that an act of sexual penetration occurred between defendant and the complainant. The only dispute concerns the second element, whether the sexual penetration was achieved by force or coercion.

In the instant case, the complainant testified that defendant grabbed her and pulled her to the floor, while she said “no” more than once. She testified that defendant tried to choke and smother her and threatened to kill her. She also testified that defendant ignored her protests, kicks and screams, and put all his weight on her so that she could not move, and then forcefully penetrated her. Defendant testified that he and the complainant engaged in consensual sex.

The complainant’s testimony was corroborated by several witnesses. Defendant’s neighbor described the complainant as crying and disheveled when she came out of defendant’s trailer. The complainant’s sister testified that when she picked up the complainant, the complainant fell into her arms crying and told her that she had been raped. The complainant’s testimony was also corroborated by a deputy sheriff who testified that she appeared distraught and upset and had marks of injuries on her nose, the side of her neck and also on her legs.

Credibility is a matter for the trier of fact to ascertain. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). This Court will not resolve credibility questions anew. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). The jury was entitled to believe the complainant’s testimony regarding the events that occurred in defendant’s trailer, rather than defendant’s testimony. The complainant’s testimony provided sufficient evidence of sexual penetration achieved by force or coercion to support defendant’s conviction of CSC III.

Affirmed.

/s/ Harold Hood  
/s/ Gary R. McDonald  
/s/ Helene N. White