

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEROY C. CASTEEL,

Defendant-Appellant.

UNPUBLISHED

March 23, 1999

No. 206350

Recorder's Court

LC No. 97-000619

Before: Gribbs, P.J., and Griffin and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of first-degree criminal sexual conduct (felony), MCL 750.520b(1)(c); MSA 28.788(2)(1)(c), first-degree criminal sexual conduct (weapon used), MCL 750.b(1)(e); MSA 28.788(2)(1)(e), and armed robbery, MCL 750.529; MSA 28.797. Defendant was sentenced to twenty to thirty years in prison for each conviction, all sentences to run concurrently. We affirm.

Defendant argues on appeal that the prosecution failed to present sufficient evidence to support defendant's conviction of armed robbery. We disagree. In reviewing the sufficiency of the evidence following a bench trial, this Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find 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), citing *People v Petrella* 424 Mich 221, 268-270; 380 NW2d 11 (1985). However, this Court should not interfere with the trial court's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended on other grounds, 441 Mich 1201 (1992); *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Circumstantial evidence and the reasonable inferences which arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996).

Defendant challenges the sufficiency of the evidence that he was armed and that an assault took place. The elements of armed robbery are (1) an assault, (2) a felonious taking of property from the victim's person or presence, and (3) that defendant be armed with a weapon described in the statute.

People v Johnson, 215 Mich App 658, 671; 547 NW2d 65 (1996); MCL 750.529; MSA 28.797. The statute defines a weapon as a dangerous weapon or an object fashioned in a way to lead someone to reasonably believe it to be a dangerous weapon. MCL 750.529; MSA 28.797.

Defendant claims that the prosecution did not establish that defendant was armed when he robbed complainant. However, complainant testified that defendant had an open pocket knife with which he poked her during the sexual assault and that immediately thereafter, defendant robbed her. Additionally, the mere presence of a knife as defendant was ordering the complainant to perform sexual acts was sufficient to place her in reasonable apprehension of receiving an immediate battery. *People v McConnell*, 124 Mich App 672, 678-679; 335 NW2d 226 (1983). Viewed in the light most favorable to the prosecution, there was sufficient evidence to prove the elements of armed robbery beyond a reasonable doubt.

Next, defendant argues that the prosecution failed to present sufficient evidence to support defendant's conviction of first-degree criminal sexual conduct (felony). We disagree.

The elements of first-degree criminal sexual conduct (felony) are that (1) a person engages in sexual penetration with another person, and (2) that the sexual penetration occurs under circumstances involving the commission of any other felony. *People v Jones*, 144 Mich App 1, 4; 373 NW2d 226 (1985); MCL 750.520b(1)(c); MSA 28.788(2)(1)(c).

Defendant first argues that the prosecution failed to establish the elements of armed robbery necessary for first-degree criminal sexual conduct (felony). However, for the reasons discussed above, the prosecution presented sufficient evidence to prove armed robbery.

Alternatively, defendant maintains that the sexual assaults occurred before the alleged armed robbery took place and, therefore, the criminal sexual conduct did not take place *during* the commission of the armed robbery. However, the *Jones* Court, *supra* at 4, has specifically addressed and rejected such an argument, stating: "The Legislature, however, did not attempt to narrowly define the coincidence or sequence of the sexual act and the other felony; rather it chose to address the increased risks to, and the debasing indignities inflicted upon, victims by the combination of sexual offenses and other felonies by treating the sexual acts as major offenses when they occur 'under circumstances involving the commission of any other felony.'" Just as the defendant in *Jones* took the complainant's purse after the sexual assault in question, defendant here took complainant's belongings after he forced her to perform oral sex and vaginally penetrated her. Based on *Jones*, the fact that the sexual assault took place before the felony (armed robbery) does not take it outside the statutory definition of occurring during the commission of a felony. Viewed in the light most favorable to the prosecution, there was sufficient evidence to convict defendant of first-degree criminal sexual conduct (felony).

Defendant also argues on appeal that the prosecution failed to present sufficient evidence to support defendant's conviction of first-degree criminal sexual conduct (weapon). We disagree.

The elements of first-degree criminal sexual conduct (weapon used) are: (1) that defendant was armed, (2) that defendant engaged in sexual penetration and, (3) that defendant was armed with a weapon. *People v Harris*, 133 Mich App 646, 651; 350 NW2d 305 (1984); MCL 750.520b(1)(e); MSA 28.788(2)(1)(e). Here, complainant testified that defendant had an open pocket knife at the time of the sexual assault and that he poked her with it as he sexually assaulted her. The trial court stated that it believed complainant and found her to be a credible witness. This Court should not interfere with the trial court's role of determining the weight of evidence or the credibility of witnesses. *Wolfe, supra* at 514; *Terry, supra* at 452. Viewed in the light most favorable to the prosecution, there was sufficient evidence to convict defendant of first-degree criminal sexual conduct (weapon used).

Affirmed.

/s/ Roman S. Gibbs
/s/ Richard Allen Griffin
/s/ Kurtis T. Wilder