

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN ERNEST LEE,

Defendant-Appellant.

UNPUBLISHED

April 25, 1997

No. 192098

Lenawee Circuit Court

LC No. 95-006592-FH

Before: Sawyer, P.J., and Murphy and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for fourth-degree criminal sexual conduct, MCL 750.520e(1)(b); MSA 28.788(5)(1)(b). Defendant was sentenced to five years' probation with ninety days to be served in the county jail. We affirm.

Defendant argues on appeal that the evidence presented at trial was insufficient to support his conviction. We disagree. In determining whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution to 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 Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Baker*, 216 Mich App 687, 689; 551 NW2d 195 (1996).

As applicable to the present case, the offense of fourth-degree criminal sexual conduct requires proof that: (1) defendant intentionally touched the complainant's breasts, or the clothing covering that area; (2) that this was done for sexual purposes or could reasonably be construed as having been done for sexual purposes; and (3) that the defendant used force or coercion to commit the sexual act. *People v Premo*, 213 Mich App 406, 408; 540 NW2d 715 (1995) (interpreting MCL 750.520e[1][a]; MSA 28.788[5][1][a], the substantially similar predecessor to MCL 750.520e[1][b]; MSA 28.788[5][1][b]); CJ12d 20.13; CJ12d 20.15. "Force or coercion" includes circumstances where the actor overcomes the victim through the actual application of physical force or physical violence. MCL 750.520e(1)(b)(i); MSA 28.788(5)(1)(b)(i).

Complainant testified that defendant grabbed her from behind, held her tightly and touched her breasts over the top of her clothing. Defendant then lowered his hands down the front of complainant's torso causing her to believe that defendant was about to unbutton her pants. Complainant was able to break free, only after defendant loosened his hold upon her. Viewing this evidence in a light most favorable to the prosecution, a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.

Defendant argues that complainant's testimony was inherently incredible because her trial testimony is inconsistent with the statements she gave to the police. Assessing the credibility of a testifying witness is a function of the jury. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990). "This Court may not interfere with the jury's resolution of credibility disputes." *People v DeLisle*, 202 Mich App 658, 660; 509 NW2d 885 (1993).

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Mark J. Cavanagh