

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KAREN DIANE RICHARDS,

Defendant-Appellant.

UNPUBLISHED

June 27, 1997

No. 196585

Livingston Probate Court

LC No. 95-200951-DL

Before: Markman, P.J., and Holbrook, Jr., and O'Connell, JJ.

PER CURIAM.

Defendant, a juvenile, was convicted by a probate court jury of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). The probate court denied defendant's post-trial motion for a new trial. She appeals as of right and we affirm.

Defendant first argues that insufficient evidence was presented to sustain her conviction, specifically noting that the testimonial record is riddled with inconsistencies and that she and her mother presented direct testimony refuting the finding of any wrongdoing. We find no merit to this argument. In reviewing a sufficiency of the evidence question, this Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). "Inherent in the task of considering the proofs in the light most favorable to the prosecution is the necessity to avoid a weighing of the proofs or a determination whether testimony favorable to the prosecution is to be believed. All such concerns are to be resolved in favor of the prosecution." *People v Herbert*, 444 Mich 466, 474; 511 NW2d 654 (1993). In addition, when deciding this issue, this Court must not interfere with the jury's role of determining the weight of the evidence or the credibility of the witnesses. *Wolfe, supra*, 514. Here, the complainant's testimony, even if uncorroborated, see MCL 750.520h; MSA 28.788(8), was sufficient to sustain defendant's conviction under MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). The fact that there were inconsistencies in the testimony of the prosecution witnesses or that defendant presented evidence to rebut the allegations does not provide this Court with a basis to overturn the jury's verdict

because of insufficient evidence. Similarly, we find no merit to defendant's argument that her conviction was against the great weight of the evidence. *Herbert, supra*.

Defendant next argues that the probate court erred in instructing the jury on fourth-degree CSC because that crime is not a lesser included offense of second-degree CSC, nor was evidence of force or coercion presented to warrant the instruction. Here, regardless whether fourth-degree CSC is a necessarily included or a cognate lesser included offense of second-degree CSC, its inclusion was, at most, harmless error and of no prejudice to defendant. See *People v Mosko*, 441 Mich 496, 501; 495 NW2d 534 (1992). Although the jury was given the option to convict on the lesser charge, it ultimately convicted defendant on the original charge of second-degree CSC, therefore, defendant cannot claim prejudice because of the instruction. *People v Beach*, 429 Mich 450, 491, 493; 418 NW2d 861 (1988).

Affirmed.

/s/ Stephen J. Markman
/s/ Donald E. Holbrook, Jr.
/s/ Peter D. O'Connell