

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC ALLEN HAPEMAN,

Defendant-Appellant.

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UNPUBLISHED

March 15, 2007

No. 267039

Barry Circuit Court

LC No. 04-100161-FC

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Defendant was convicted by a jury of two counts of first-degree criminal sexual conduct (CSC), MCL 750.520b(1)(a), and one count of second-degree CSC, MCL 750.520c(1)(a), for sexually assaulting his younger stepbrother, who was 11 years old at the time of trial. He was sentenced to concurrent prison terms of 12 to 20 years each for the first-degree CSC convictions and 8 to 15 years for the second-degree CSC conviction. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that the jury's verdicts were against the great weight of the evidence. We disagree.

"This Court reviews for an abuse of discretion the trial court's denial of a motion for a new trial on the ground that the verdict was against the great weight of the evidence." *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). A verdict is against the great weight of the evidence if the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v Musser*, 259 Mich App 215, 218-219; 673 NW2d 800 (2003).

"Conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial." *People v Lemmon*, 456 Mich 625, 647; 576 NW2d 129 (1998). "[U]nless it can be said that directly contradictory testimony was so far impeached that it 'was deprived of all probative value or that the jury could not believe it,' or contradicted indisputable physical facts or defied physical realities, the trial court must defer to the jury's determination." *Id.* at 645-646 (citation omitted). [*Musser*, *supra* at 219.]

Defendant argues that the jury's verdict was against the great weight of the evidence because: (1) there was evidence suggesting that the victim had a motive to fabricate the charges, primarily because he did not like his stepfather; (2) there was evidence that the victim and his sisters, particularly his older sister, were trying to disrupt the family by exaggerating complaints of abuse; (3) the victim's mother complained to a counselor that her children often lied; (4) there was evidence that the victim was an angry and aggressive child before he claimed that defendant began abusing him; (5) there was no evidence to support the victim's claim that he told his mother and stepfather about the abuse; (6) although a family caseworker had a strong rapport with the victim, he never disclosed the abuse to her; (7) an open vent in the upstairs bedroom where the abuse allegedly occurred enabled the victim's mother and stepfather to hear everything that happened in the bedroom, and his stepfather was a light sleeper; (8) it was unlikely that the victim would allow himself to be abused because he did not fear physical confrontations with his siblings; and (9) defendant denied the victim's allegations and was quite upset by them.

We agree with the trial court that the jury's verdict was not against the great weight of the evidence. As the court observed, the case came down to a question of the victim's credibility. Despite the behavioral problems the victim had and his poor relationship with his stepfather (giving him a possible motive to fabricate the allegations), the victim's testimony was not so far impeached that it would be a miscarriage of justice to allow the verdict to stand. Moreover, there was no physical evidence that contradicted the jury's verdict. For these reasons, the trial court did not abuse its discretion in denying defendant's motion for a new trial. *Lemmon, supra*; *Musser, supra*.

Affirmed.

/s/ Deborah A. Servitto

/s/ Michael J. Talbot

/s/ Bill Schuette