

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
April 22, 2014

v

MARK ANTHONY JOHNSON,
Defendant-Appellant.

No. 314166
Oakland Circuit Court
LC No. 2012-241672-FC

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

MARK ANTHONY JOHNSON,
Defendant-Appellant.

No. 314170
Oakland Circuit Court
LC No. 2012-241421-FH

Before: BORRELLO, P.J., and WHITBECK and K. F. KELLY, JJ.

PER CURIAM.

In Docket No. 314166, defendant, Mark Anthony Johnson, appeals as of right his convictions, following a jury trial, of five counts of first-degree criminal sexual conduct (CSC I),¹ one count of third-degree criminal sexual conduct (CSC III),² and one count of assault with intent to commit criminal sexual conduct involving penetration.³ In Docket No. 314170, Johnson appeals as of right his conviction, following a jury trial, of possession with intent to deliver marijuana.⁴ The trial court sentenced Johnson, as a fourth-offense habitual offender,⁵ to

¹ MCL 750.520b(1)(e) and (f) (use of a weapon and personal injury with force or coercion).

² MCL 750.520d(1)(b) (force or coercion).

³ MCL 750.520g(1).

⁴ MCL 333.7401(2)(d)(iii).

serve concurrent prison terms of 50 to 80 years for each CSC I conviction, 50 to 80 years for his CSC III conviction, 20 to 50 years for his assault conviction, and 22 months to 15 years for his possession with intent to deliver conviction. We affirm.

I. FACTS

A. CRIMINAL SEXUAL CONDUCT (DOCKET NO. 314166)

Five women testified that Johnson sexually assaulted them in separate incidents between October 2010 and April 2012. The women each identified Johnson as having a distinctive facial scar, and as driving a dark blue or grey Impala.

The prosecutor admitted R.W.'s preliminary examination testimony into evidence because she died before trial. R.W. testified that she is a heroin addict. According to R.W., in October 2010, she left a party store and asked Johnson for a light for her cigarette. Johnson grabbed her around the neck, held a knife to her throat, and took her behind an abandoned house. According to R.W., Johnson penetrated her anally, stole money from her wallet, and told her not to call the police.

R.W. testified that she did not call the police because she had an outstanding warrant, Johnson knew where she lived, and she did not think that anyone would believe her because she was a heroin addict. R.W. testified that she contacted the police after she learned that Johnson had been arrested.

M.V. testified that she is a prostitute and alcoholic. According to M.V., Johnson approached her when she was leaving a liquor store at about 2:30 p.m. in December 2011. Johnson held a hunting knife to her side and forced her to walk to an abandoned house. At the abandoned house, Johnson anally penetrated M.V. twice, threatened to kill her if she moved, and then left.

M.V. reported the assault to the police, who took her to a clinic where a rape kit was performed. Jennifer Jones, a forensic biologist, testified that Johnson's DNA profile matched the DNA profile of a donor on swab taken from M.V.'s rape kit.

K.J. testified that she is a prostitute and crack cocaine addict. K.J. testified that, in late 2011, Johnson picked her up with the understanding that he would pay her for sexual services. According to K.J., she and Johnson entered an abandoned apartment. K.J. told Johnson that she would not do anything until he paid her, and Johnson refused to pay. When K.J. attempted to leave, Johnson grabbed her by the throat, threatened to hurt her, penetrated her anally, and left. K.J. testified that she was bleeding and in pain, but did not seek medical attention or report the incident to the police because she did not believe that the police would take her seriously.

K.J. testified that, a few months later, she again got into Johnson's car. When she realized that Johnson was driving, she jumped out of the car while it was moving. Again, she did

⁵ MCL 769.12.

not report the incident to the police. K.J. testified that police approached her with a photographic lineup in April 2012, and she identified Johnson and gave a statement.

J.W. testified that she is a prostitute and a heroin and crack cocaine addict. J.W. testified that, in early 2012, Johnson picked her up and agreed to pay for sexual services. J.W. testified that Johnson drove her to an abandoned apartment complex. According to J.W., she told Johnson that he would have to pay her before she would perform. Johnson told her that he had a gun and would not pay her, and said that if she cooperated, she would not get hurt. J.W. testified that Johnson penetrated her anally. She did not report the incident to the police because she did not think that they would care.

J.W. testified that she got into Johnson's car a second time a few weeks later. According to J.W., Johnson was driving a different car. J.W. attempted to get out of the car, but Johnson sped up. Johnson took her to the same apartment complex. Johnson had a paper bag that J.W. believed contained a gun, and he choked her when she tried to escape. Johnson again anally penetrated J.W., and she did not report the incident because she was a prostitute. J.W. testified that she called the police after the third time that Johnson tried to pick her up because she did not believe that Johnson would leave her alone.

T.W. testified that at about 3:00 a.m. in March 2012, she argued with her boyfriend, got out of his car, and began walking home. T.W. testified that she was not a prostitute, and she had been drinking but was not drunk. According to T.W., Johnson approached her in a car and asked if she wanted a ride. Johnson drove T.W. to an abandoned apartment and told T.W. to get out of his car while he sold some heroin.

According to T.W., she realized that she was in a bad situation and attempted to walk away. Johnson grabbed her neck and tried to force her into the apartment. T.W. testified that she managed to get away and fled to a well-lighted porch, where she called the police. T.W. identified Johnson in a photographic lineup.

The jury found Johnson guilty of two counts of CSC I against M.V., one count of CSC I and one count of CSC III against J.W., one count of CSC I against K.J., one count of CSC I against R.W., and one count of assault with intent to commit sexual penetration against T.W.

B. POSSESSION WITH INTENT TO DELIVER (DOCKET NO. 314170)

At a separate trial, Oakland County Sheriff's Department Deputy Jason Teelander testified that officers were searching for Johnson on an unrelated case when they received a tip that he might be at a home on Michigan Avenue in Pontiac. According to Deputy Teelander, he set up surveillance on the home. He observed the home for 90 minutes, during which time three people arrived and stopped for less than two minutes. He believed that this activity was consistent with drug trafficking.

Deputy Teelander testified that Johnson left the home at about 10:00 p.m. and got into the passenger seat of a dark grey Impala. Officers stopped the car, and Oakland County Sheriff's Deputy Brian Wood testified that he ordered Johnson to get out of the car. According to Deputy Wood, he searched Johnson and found marijuana in Johnson's waistband. The marijuana was in

seventeen individual bags of different sizes, contained inside a gallon-sized ziplock bag. Deputy Wood testified that this type of packaging was consistent with drug trafficking.

Oakland County Sheriff's Detective Joseph Marougi testified that he interviewed Johnson at the police department. According to Detective Marougi, Johnson told him that he was "fronted" the marijuana, and that he intended to sell it to make a profit. Johnson testified that, at that time, he felt that he was having a seizure and was trying to obtain medical attention as quickly as possible. Detective Marougi testified that the marijuana's packaging was consistent with someone selling drugs. Johnson testified that he was carrying the marijuana for his brother.

The jury found Johnson guilty of possession with the intent to deliver marijuana.

II. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

A claim that the evidence was insufficient to convict a defendant invokes that defendant's constitutional right to due process of law.⁶ Thus, this Court reviews de novo a defendant's challenge to the sufficiency of the evidence supporting his or her conviction.⁷ We review the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the prosecution proved the essential elements of the crime beyond a reasonable doubt.⁸

B. CRIMINAL SEXUAL CONDUCT (DOCKET NO. 314166)

Johnson contends that the evidence at his criminal sexual conduct trial was insufficient because there was no physical evidence linking him to the crimes and the witnesses were not credible. We disagree.

A complainant's testimony need not be corroborated in prosecutions involving criminal sexual conduct.⁹ The complainant's testimony alone may be sufficient to sustain a defendant's conviction.¹⁰ Here, the prosecution was not required to present physical evidence corroborating the complainants' testimonies. Johnson's argument that the prosecutor was required to provide physical evidence linking him to the crimes is without merit.

⁶ *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992). See *In re Winship*, 397 US 358, 364; 90 S Ct 1068; 25 L Ed 2d 368 (1970).

⁷ *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011).

⁸ *Id.*; *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012).

⁹ MCL 750.520h.

¹⁰ See *People v Taylor*, 185 Mich App 1, 8; 460 NW2d 582 (1990).

Further, in his brief on appeal, Johnson recognizes that this case constituted a credibility contest. However, Johnson asserts that the complainants' testimonies were inconsistent and incredible. When reviewing the sufficiency of the evidence, this Court will not interfere with the trier of fact's role to determine the weight of the evidence or the credibility of the witnesses.¹¹ Here, if the jury believed the complainants, their testimonies were sufficient to sustain Johnson's convictions. In order to convict Johnson, the jury must have chosen to believe the complainants. We defer to the jury's credibility judgment.

We conclude that the evidence was sufficient to sustain Johnson's convictions because a rational trier of fact could conclude that Johnson committed the crimes beyond a reasonable doubt.

C. POSSESSION WITH INTENT TO DELIVER (DOCKET NO. 314170)

Johnson contends that the evidence was insufficient to sustain his conviction of possessing marijuana with the intent to deliver because no one witnessed him actually selling drugs and he possessed an amount of marijuana consistent with personal use. We disagree.

We must resolve any conflicting evidence in the prosecution's favor.¹² Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime, including the defendant's intent.¹³ The jury may infer a defendant's intent to deliver a controlled substance "from the quantity of narcotics in a defendant's possession, from the way in which those narcotics are packaged, and from other circumstances surrounding the arrest."¹⁴

Here, Deputy Teelander testified that, while conducting surveillance on Johnson's house, he saw three people make very short visits to the home. Deputy Teelander testified that this type of activity was consistent with the sale of drugs. Deputy Wood testified that, when he searched Johnson, he discovered marijuana of varying quantities in individual packaging inside a larger bag. Deputy Wood and Detective Marougi both testified that this type of packaging was consistent with the sale of drugs. Finally, Detective Marougi testified that Johnson told him that he intended to sell the drugs and make a profit. Johnson testified that he was lying to Detective Marougi.

The jury was in the best position to resolve the conflict between the witnesses' testimonies at trial. Further, circumstantial evidence—including the activity at Johnson's house, and the packaging of the marijuana—supported the inference that Johnson intended to deliver the marijuana. Viewing this evidence in the light most favorable to the prosecutor, we conclude that the evidence was sufficient to support Johnson's conviction of possession with the intent to

¹¹ *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

¹² *Id.* at 619.

¹³ *Id.*

¹⁴ *Wolfe*, 440 Mich at 524.

deliver because a rational trier of fact could conclude that Johnson committed the crimes beyond a reasonable doubt.

III. CONCLUSION

In Docket No. 314166, we conclude that the complainants' testimonies were sufficient to sustain Johnson's convictions of criminal sexual conduct and assault with intent to commit sexual penetration. In Docket No. 314170, we conclude that the circumstantial evidence and Johnson's statements to Detective Marougi supported Johnson's conviction of possession with intent to deliver marijuana.

We affirm.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck
/s/ Kirsten Frank Kelly