

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MANUEL ARIAS PAREZ,

Defendant-Appellant.

UNPUBLISHED

June 23, 2005

No. 254951

Wayne Circuit Court

LC No. 02-01459-01

Before: Hoekstra, P.J. and Jansen and Kelly, J.J.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of two counts of first-degree criminal sexual conduct MCL 750.520b(1)(a) (victim under thirteen) for which the trial court sentenced him to concurrent sentences of ten to twenty years in prison. We affirm.

I. Facts

Defendant was originally charged with six counts of first-degree criminal sexual conduct and bound over on five counts. After a hearing, the trial court suppressed defendant's statement on the basis that defendant, who indicated that he did not speak English, was presented with a constitutional rights form written in English. The trial court also based its ruling on the fact that defendant's interpreter was a police officer. Plaintiff appealed the ruling. This Court reversed after determining that the record demonstrated that defendant's statement was made knowingly and voluntarily.

At trial, the eleven-year-old victim testified that when she was nine years old she lived with her grandmother for the summer. Defendant lived upstairs. On two or three different days, defendant forced her into his apartment and engaged her in sexual acts, including vaginal, anal, and oral intercourse as well as placing fruit in her private area.

Defendant's statement was admitted as evidence. In the statement, defendant admitted to digital and penile penetration, but denied oral penetration. He also denied molesting the victim with fruit. Defendant testified at trial that he does not speak English. With regard to his interrogation, he testified that a police officer struck him in the face when he indicated that he did not understand the constitutional rights form. He also testified that the officer threatened that if he did not write down what he was told, he would call "white cops" to "f--- him up." He testified that he wrote the confession only because he was being hit and threatened. Defendant

further testified that he lived in the same building as the victim. He never touched the victim or talked to her. He was warned by others to be careful with her because she went around talking to men and telling lies and stories. The jury found defendant guilty of two of the five counts of first-degree criminal sexual conduct.

II. Admission of Defendant's Statement

Defendant first contends that the trial court erred in admitting his statement when it was obtained by a police officer who, acting as both an interpreter and an interrogator, coerced defendant. Plaintiff suggests that this issue was already decided by this Court in *People v Perez*, unpublished opinion per curiam of the Court of appeals, issued September 30, 2003 (Docket No. 247006). We agree that this Court previously decided this issue and that decision is binding on us in this appeal.

Whether the law of the case doctrine applies is a question of law that is reviewed de novo. *Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001). "Under the law of the case doctrine, an appellate court's determination of law will not be differently decided on a subsequent appeal in the same case if the facts remain materially the same. If a litigant claims error in the first pronouncement, the right of redress rests in a higher tribunal." *People v Kozyra*, 219 Mich App 422, 433; 556 NW2d 512 (1996) (citation omitted).

In this case, the trial court granted defendant's motion to suppress the statement after concluding that defendant did not make a knowing and voluntary waiver of his *Miranda*¹ rights. The prosecution appealed arguing that, under the totality of the circumstances, a knowing and voluntary waiver had occurred. This Court agreed. It first determined that defendant made the statement without being coerced and then determined that defendant's statement was made knowingly.

As a new basis for appellate review, defendant argues that this Court relied on the trial court's erroneous finding of fact that the officers did not hit defendant. We disagree. This Court noted in its previous opinion that the trial court found that the officers had not hit defendant. However, this Court reviewed the record and stated in its opinion: "Defendant testified that he was hit in the face and threatened by police officers." Therefore, defendant has failed to present a basis for this Court to review this issue again. We conclude as a matter of law that the issue presented in this appeal regarding the admission of defendant's statement was already decided by this Court and we are bound by that decision.

III. Sufficiency of the Evidence

Defendant next argues that the evidence was insufficient to support his conviction. We disagree.

When reviewing the sufficiency of the evidence in a criminal case, we "view the evidence in a light most favorable to the prosecution and determine whether a rational trier of

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 694 (1966).

fact could find that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997). All conflicts with regard to the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

A person is guilty of CSC I if he engages in sexual penetration with another person who is under thirteen years of age. MCL 750.520b(1)(a) “Sexual penetration” includes any “intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body.” MCL 750.520a(o).

Defendant’s claim that the evidence was insufficient is based in part on his assertion that the jury must have relied on his statement, which was inadmissible. However, we determined above that this Court has already decided that there was no error in the admission of defendant’s statement. The remainder of defendant’s claim rests on his assertion that the victim’s testimony lacked credibility and there was no physical evidence to support his conviction. However, the testimony of a sexual assault complainant need not be corroborated by other evidence. MCL 750.520h. Further, the jury was entitled to accept the complainant’s testimony as credible. This Court may not reassess the credibility of witnesses. *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002).

IV. Great Weight of the Evidence

Defendant also argues that the verdict was against the great weight of the evidence. Specifically, defendant relies on *People v Lemmon*, 456 Mich 625; 576 NW2d 129 (1998) and contends that the victim’s testimony contradicted indisputable physical facts. However, in this case, defendant has shown no physical evidence whatsoever that contradicts the victim’s testimony. Therefore, defendant has failed to persuade us that the verdict was against the great weight of the evidence.

V. Sentencing

Defendant also contends that he is entitled to resentencing because the trial court improperly assessed points under offense variables four (OV 4) and ten (OV 10). We disagree. We review for an abuse of discretion a sentencing court’s determination of the number of points to be scored for a particular sentencing variable. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). This Court upholds scoring decisions for which there is any evidence in support. *Id.*

MCL 777.34(2) permits the scoring of OV 4 for psychological injury if it “may require professional treatment . . . the fact that the treatment has not been sought is not conclusive.” In this case, the examining physician testified that the victim “was not acting like a ten year old should be.” This was sufficient to support the trial court’s scoring of OV 4.

Defendant also argues that OV 10 should not have been scored because there was no evidence that defendant exploited the victim’s disability of youth. MCL 777.40. In support of this argument, defendant again contends that the evidence was insufficient to establish beyond a reasonable doubt that he sexually assaulted the victim. However, as we concluded above, there

was ample evidence to support defendant's conviction. Therefore, we also reject defendant's argument that OV 10 was improperly scored.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Kathleen Jansen
/s/ Kirsten Frank Kelly