

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
December 6, 2012

v

DEAN COURTNEY,

Defendant-Appellant.

No. 307973
Wayne Circuit Court
LC No. 11-006897-FH

Before: SAWYER, P.J., and SAAD and METER, JJ.

PER CURIAM.

Defendant appeals his bench trial conviction of fourth-degree criminal sexual conduct. MCL 750.520e(1)(a). For the reasons set forth below, we affirm.

II. FACTS AND PROCEEDINGS

The victim testified that, when she was 13 years old, defendant's four-year-old son, CC, took her into defendant's bedroom. When defendant walked in, CC left the room and defendant told the victim to lie down on his bed. The victim lay on her back, and defendant put a leg over her. Thereafter, defendant climbed on top of the victim, kissed her, and said, repeatedly, "Don't tell your mom, don't tell anybody."

The victim testified that, then, defendant pulled her on top of him and kissed her neck. Defendant said, "[T]his is a better position because I would crush you." While the victim was on top of defendant, defendant was touching her "lower back to [her] buttocks." According to the victim, defendant touched her over her clothing and, as defendant let her go, he touched her vaginal area. The victim denied that defendant spread her legs, and testified that her legs were close together.

The victim also testified defendant made her touch and rub his genital area over his clothes. Defendant asked if she had ever felt a man, and the victim said, "No." Defendant then let go of the victim. When asked during direct examination if she felt anything when she rubbed defendant, she replied, "No," but on cross-examination she responded that she felt "[a] little bit" but could not describe what she felt. The victim recounted that CC walked into the bedroom and said, "Get off her, she's my girlfriend," to which defendant replied, "No, she's mine."

Defendant testified that he was talking to his neighbor, Jamie Terry, when the victim walked onto his property to see CC. CC told defendant he was going into the house. Defendant told him not to take anyone into the house, but CC and the victim went inside anyway. When defendant walked into the house, he saw the victim and CC in CC's room. Defendant testified that upon seeing him, the victim came out of CC's room to give him a hug. Defendant testified the hug made him "uneasy." Defendant went to the bathroom inside his bedroom. When he came out of his bathroom, the victim was sitting at the end of his bed. CC came in and started to grab the victim around her neck. Defendant reached around the victim's neck to pull his son off of her, and she hugged defendant and thanked him for his help. Defendant raised his hands in response to this hug because it made him uncomfortable. Defendant said he told the victim it was inappropriate for her to be in his room and he told her to leave. The victim told defendant she was having hallucinations, and he told her she needed to tell her parents about them.

The victim's mother, Kimberly, also testified. When asked about her daughter's appearance when she returned home from defendant's house, Kimberly testified the victim was pale, her eyes were very big, and she was "almost hyperventilating." The victim told Kimberly that defendant made her promise not to tell, but she proceeded to tell Kimberly about the incident. When asked on cross-examination about the victim's description of the touching, Kimberly testified that "[s]he pointed to the breasts, and her vaginal area, and she said, 'My butt,'" and that her daughter had red marks on her chest.

Defendant's neighbor Jamie Terry testified on his behalf. According to Terry, she could see defendant, CC, and the victim inside defendant's home because she could see through defendant's bay window. She described seeing shadows of three figures of different heights, which allowed her to identify them as defendant, the tallest figure, CC, the smallest figure, and the victim, the medium figure. Terry testified she saw "the tallest push the medium away."

The trial court found defendant guilty of fourth-degree CSC for touching the victim's buttocks.

II. DISCUSSION

Defendant argues that the prosecutor presented insufficient evidence to support his conviction for touching the victim's buttocks. Defendant points out that the trial court did not believe testimony that defendant touched the victim's vagina or forced her to touch his penis. This Court reviews sufficiency of the evidence issues de novo. *People v Kissner*, 292 Mich App 526, 533; 808 NW2d 522 (2011). We view the evidence "in the light most favorable to the prosecution," to determine "whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt." *People v Hardiman*, 466 Mich 417, 421, 428; 646 NW2d 158 (2002). All essential elements of the offense must be proven beyond a reasonable doubt, and "[c]ircumstantial evidence and reasonable inferences arising therefrom may be used to prove the elements of a crime." *People v Brantley*, 296 Mich App 546, 550; ___ NW2d ___ (2012). Questions about the weight of evidence and credibility of witnesses are reserved for the fact finder, with any conflicting evidence resolved in favor of the prosecutor. *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009); *People v Sherman-Huffman*, 241 Mich App 264; 615 NW2d 776 (2000).

The prosecutor presented sufficient evidence for a rational trier of fact to convict defendant of fourth-degree criminal sexual conduct. Under the fourth-degree criminal sexual conduct statute, the prosecutor has the burden to prove (1) defendant engaged in sexual contact with the victim, (2) the victim was at least 13 years old but less than 16, and (3) defendant was at least five years older than the victim. MCL 750.520e(1)(a). “Sexual contact” is defined by MCL 750.520a(q) as “the intentional touching of the victim’s or actor’s intimate parts or the intentional touching of the clothing covering the immediate area of the victim’s or actor’s intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification [or] done for a sexual purpose”

There is no dispute that the victim was 13 years old and defendant was at least five years older than the victim. The victim testified that defendant touched her buttocks and kissed her. While defendant challenges the victim’s credibility, the trial court found the victim to be credible with regard to her testimony on these elements. Further, the prosecutor established that the contact was for a sexual purpose because defendant kissed the victim, told the victim not to tell her mother, and repositioned the victim so he would not lie too heavily on her.

As defendant notes, the trial court found a reasonable doubt about two of the three charges against defendant. Specifically, the trial judge expressed concern about the victim’s testimony regarding defendant forcing her to touch his genital area because she could not describe it in sufficient detail. Further, the victim maintained that her legs were closed and, therefore, the judge found a reasonable doubt that defendant touched the victim’s vaginal area.

However, in finding defendant guilty of touching the victim’s buttocks, the trial judge noted the victim “was very detailed in indicating that he touched her lower area; that he did kiss her And the Court does believe that the fact that they were laying down—that that could have occurred.” The trial judge also noted that defendant’s testimony did not make sense when he claimed the victim repeatedly hugged him, and the judge questioned why defendant would not simply tell her to leave his house. Further, while the trial court questioned the veracity of the victim’s mother on some details, a criminal sexual conduct conviction can be supported by a victim’s testimony alone. MCL 750.520b to 520g; *People v Szalma*, 487 Mich 708, 724; 790 NW2d 662 (2010).

In sum, the trial court found credible the victim’s testimony regarding defendant’s touching of her buttocks. Such credibility determinations are for the trier of fact. *Harrison*, 283 Mich App at 378. We disagree with defendant that the trial court found the victim’s testimony regarding the other two counts incredible. Rather, it appears from the record that the trial court simply had reasonable doubt about those counts. Again, however, if the trial court did not believe the victim regarding the other counts, weight and credibility determinations are for the trier of fact, and the trial court was free to believe some of the testimony and disbelieve other aspects of her testimony. *Id.* And, significantly, the trial court also expressed doubt about defendant’s testimony. Thus, viewing the evidence in the light most favorable to the prosecution, the trial court had sufficient evidence to convict defendant beyond a reasonable doubt.

Defendant also contends that the verdict is against the great weight of the evidence. “The test to determine whether a verdict is against the great weight of the evidence is whether 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). While defendant presented evidence that conflicted with the prosecutor’s evidence, the victim provided a detailed account of how defendant touched her buttocks and kissed her, and the trial court found this evidence to be credible. Witness credibility determinations are “within the exclusive province of the [trier of fact],” and conflicting testimony is not sufficient to grant a new trial. *People v Lacalamita*, 286 Mich App 467, 469-470; 780 NW2d 311 (2009). And, again, the testimony of the victim alone is sufficient to convict in a criminal sexual conduct case. *Szalma*, 487 Mich at 724. In light of the evidence as a whole and the trial court’s credibility determinations, the weight of the evidence does not preponderate against the verdict.

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Patrick M. Meter