

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
February 19, 2013

V

CLAYTON WILLIAM SMITH,

Defendant-Appellant.

No. 308811
Allegan Circuit Court
LC No. 11-017179-FH

Before: MURPHY, C.J., and DONOFRIO and GLEICHER, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of fourth-degree criminal sexual conduct, MCL 750.520e(1)(b) (sexual contact by use of force or coercion). Because the evidence was sufficient to support defendant's conviction, we affirm.

Defendant volunteered at a thrift store that the victim, "GD," managed. Defendant often came to the store on days that he was not scheduled to work and refused to leave when he was told that he was not needed. According to GD, in the weeks leading up to the assault, defendant stood in corners of the store and stared at her. On the day of the assault, defendant, GD, and another volunteer, Joseph Stauffer, were at the store. GD and Stauffer went outside to take a break, and when GD reentered the store, she did not know where defendant was. As GD was walking down an aisle, defendant jumped out from behind a knickknack rack, grabbed her around the waist, and ran his hands down her clothed buttocks. GD testified that she did not see defendant until he touched her, and that she pushed him away and yelled at him to leave. Stauffer witnessed the argument after the assault and testified that GD was visibly angry. Defendant was not permitted to return to the store.

GD eventually reported the assault to the police and Detective Chris Koster interviewed defendant. Although defendant initially denied assaulting GD, he ultimately admitted doing so and apologized for his actions. Defendant testified at trial that he told Koster that he did not assault GD but Koster kept "badgering" him. Defendant claimed that he ultimately agreed to some of the things that Koster said because he "got tired of listening to [Koster] run his mouth" and wanted to leave.

Defendant argues that the evidence was insufficient to support his conviction because the prosecution failed to establish the required element of force or coercion. "In reviewing a claim of insufficient evidence, we view the evidence in a light most favorable to the prosecution to

determine whether a rational trier of fact could have concluded that the elements of the offense were proven beyond a reasonable doubt.” *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008). We defer to the jury’s determinations regarding the weight of the evidence and the credibility of witnesses and resolve all evidentiary conflicts in favor of the prosecution. *Id.*

MCL 750.520e(1)(b) provides that “[a] person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person” and “[f]orce or coercion is used to accomplish the sexual contact.” “Force or coercion” includes a circumstance in which “the actor achieves the sexual contact through concealment or by the element of surprise.” MCL 750.520e(1)(b)(v). “[F]orce or coercion is not limited to physical violence but is instead determined in light of all of the circumstances.” *People v Brown*, 197 Mich App 448, 450; 495 NW2d 812 (1992).

Because the words “concealment” and “surprise” are not defined in the statute, we may consult dictionary definitions of those terms and accord them their plain and ordinary meanings. See *People v Gould*, 225 Mich App 79, 84; 570 NW2d 140 (1997). *Random House Webster’s College Dictionary* (1997) defines “conceal” as “to hide; cover or keep from sight” and defines “surprise” as “to come upon or discover suddenly and unexpectedly.”

The evidence presented at trial shows that defendant achieved sexual contact with GD through concealment and the element of surprise. GD testified that defendant concealed himself behind a knickknack rack and jumped out at her unexpectedly. By the time that GD saw defendant, he was already touching her. Although GD knew that defendant was somewhere inside the store, she did not know that he was behind the knickknack rack and did not expect him to jump out at her. She was scared and afraid as a result of the incident. Based on GD’s testimony, a rational jury could have concluded that defendant accomplished the sexual contact through the use of concealment and surprise, which satisfies the element of force or coercion. MCL 750.520e(1)(b)(v). In addition, although MCL 750.520h provides that a victim’s testimony need not be corroborated, Stauffer corroborated GD’s testimony because he heard defendant and GD arguing immediately after the incident and maintained that GD was visibly angry. Further, although defendant argues that his interview with Koster was inconsistent, a transcript of the interview was read into evidence and the jury heard testimony from both defendant and Koster. It was for the jury to determine the credibility of the witnesses, and this Court will not interfere with a jury’s credibility determinations. *Unger*, 278 Mich App at 222. Accordingly, the evidence was sufficient for a rational jury to conclude that defendant accomplished sexual contact through the use of force or coercion by overcoming GD using concealment and the element of surprise.

Affirmed.

/s/ William B. Murphy
/s/ Pat M. Donofrio
/s/ Elizabeth L. Gleicher