

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERAD AL WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

February 25, 1997

No. 189048

Iosco Circuit Court

LC No. 95-003060-FH

Before: Corrigan, C.J., and Doctoroff and R.R. Lamb,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of fourth-degree criminal sexual conduct (CSC IV), MCL 750.520e; MSA 28.788(5). He was sentenced to a year of probation, with the first four months to be served in jail. Defendant appeals as of right from his conviction. We affirm.

In order to sustain a conviction for CSC IV, the prosecution must show that the defendant used force or coercion to accomplish sexual contact. MCL 750.520e(1)(b)(i); MSA 28.788(5)(1)(b)(i). Defendant argues that his conviction must be reversed because there was insufficient evidence to establish force or coercion. We disagree. The complainant testified that defendant had grabbed her hair to hold her in place while touching her breasts and vaginal area. This testimony was sufficient to satisfy this element of CSC IV.

Defendant also contends that it would have been physically impossible for him to have performed the acts described by the complainant -- holding her hair with one hand and fondling her with his other hand while keeping a door closed by placing his foot against the bottom of the door. It is solely within the province of the jury to weigh the evidence and assess the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), modified 441 Mich 1201 (1992). Viewed in the light most favorable to the prosecution, the complainant's description of the events was such that a rational trier of fact could have determined that it occurred beyond a reasonable doubt. See *People v Turner*, 213 Mich App 558, 565; 540 NW2d 728 (1995).

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant next argues that his trial counsel rendered ineffective assistance by failing to provide “drama” in the opening statement, by failing to rebut inaccuracies or inconsistencies introduced in the prosecution’s opening statement, and by failing to challenge the complainant’s account of the crime on cross-examination. We disagree.

Defense counsel’s opening statement sufficiently introduced defendant’s theory of the case by contending that the encounter was consensual. We note that defendant cites no authority for the proposition that the opening statement must have been dramatic in order for counsel’s assistance to have been effective. Furthermore, defendant fails to indicate which parts of the prosecution’s opening statement were allegedly inaccurate or inconsistent. We have reviewed the opening statement and find no glaring inconsistencies or inaccuracies. Finally, we conclude that defense counsel may have exercised sound trial strategy in avoiding confrontation with the complainant, thus depriving her of the chance to explain away weaker points of her testimony. This Court will not substitute its judgment for that of counsel regarding matters of trial strategy, nor will it assess counsel’s competence with the benefit of hindsight. *People v Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987); *People v Kvam*, 160 Mich App 189, 200; 408 NW2d 71 (1987). In sum, defendant has not established that his counsel’s performance fell below an objective standard of reasonableness under prevailing professional norms or that there is a reasonable probability that, but for an error, the result of the proceedings would have been different. *United States v Cronin*, 466 US 648; 104 S Ct 2039; 80 L Ed 2d 657 (1984); *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674, reh den 467 US 1267; 104 S Ct 3562; 82 L Ed 2d 864 (1984); *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). Thus, defendant failed to establish ineffective assistance of counsel.

Affirmed.

/s/ Maura D. Corrigan
/s/ Martin M. Doctoroff
/s/ Richard R. Lamb