STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SCOTT CARL MEZUK,

Defendant-Appellant.

UNPUBLISHED
November 4, 1997

No. 195407
Macomb Circuit Court
LC No. 94-002650-FH

Before: Jansen, P.J., and Doctoroff and Gage, JJ.

PER CURIAM.

After a bench trial, defendant was convicted of assault with intent to commit second-degree criminal sexual conduct, MCL 750.520g(2); MSA 28.788(7)(2). He was sentenced to three years' probation. He now appeals as of right. We affirm.

Defendant first argues that the trial court erred in denying his motion to suppress statements he made to police on the grounds that they were involuntary. When reviewing a trial court's determination of the voluntariness of a statement, this Court must examine the entire record and make an independent determination. *People v Haywood*, 209 Mich App 217, 225-226; 530 NW2d 497 (1995). Nevertheless, the trial court's findings will not be reversed unless they are clearly erroneous. *Id.* at 226. In evaluating the admissibility of a defendant's statement, this Court reviews the totality of the circumstances surrounding the making of the statement to determine whether it was freely and voluntarily made. *Id*. Factors to consider include: the age of the accused; his lack of education or his intelligence level; the extent of his previous experience with the police; the repeated and prolonged nature of the questioning; the length of the detention of the accused before he gave the statement in question; the lack of any advice to the accused of his constitutional rights; whether there was an unnecessary delay in bringing him before a magistrate before he gave the confession; whether the accused was injured, intoxicated or drugged, or in ill health when he gave the statement; whether the accused was deprived of food, sleep, or medical attention; whether the accused was physically abused; and whether the suspect was threatened with abuse. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988); *Haywood, supra* at 226.

Defendant argues that his statements were involuntary because, at the time he was questioned, he felt physically ill from a hangover, he had not slept well, and he had not eaten. We disagree. An independent review of the record in the present case reveals that defendant was allowed to sleep the night before he was questioned by the police. He did not request food, and declined an offer of coffee. He was aware of his *Miranda* rights, and chose to speak to police without his lawyer present. He was repeatedly reminded that he did not have to make a statement, but he chose to do so because he wanted to "clear things up." Defendant was 23 years old and had some college education, and was considering a career in law enforcement. Under the totality of the circumstances, we find that defendant's statements were freely and voluntarily made.

Defendant next argues that the evidence was insufficient to support his conviction. When reviewing a claim of insufficient evidence following a bench trial, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). The elements of assault with intent to commit second-degree criminal sexual conduct are: an assault, involving the use of force or coercion, with the specific intent to touch the victim's genital area, groin, inner thigh, buttock, breast, or clothing covering those areas, for the purpose of sexual arousal or gratification. *People v Evans*, 173 Mich App 631, 634; 434 NW2d 452 (1988). Circumstantial evidence, and reasonable inferences arising from the evidence, may constitute satisfactory proof of the elements of the offense. *Hutner, supra*. Intent may be inferred from all the facts and circumstances of the case. *People v Wolford*, 189 Mich App 478, 480; 473 NW2d 767 (1991). This Court may not determine the weight and credibility of the evidence. *People v Herbert*, 444 Mich 466, 474; 511 NW2d 654 (1993).

Defendant first argues that the evidence was insufficient to prove that he had the specific intent required for conviction of the offense. We disagree. Viewed in a light most favorable to the prosecution, the evidence indicates that defendant went into the women's bathroom, grabbed the victim as she was coming out of the bathroom stall, forced her against the toilet, grabbed and tore her shirt and bra, and struck her several times. The victim testified that defendant's pants were around his ankles, and defendant himself told police that his pants were open when he encountered the victim. A reasonable trier of fact could have inferred from this evidence that defendant intended to touch the victim's genital area, groin, inner thigh, buttock, breast, or clothing covering those areas, for the purpose of sexual arousal or gratification.

Defendant next argues that the evidence was insufficient to prove specific intent because he was intoxicated at the time the incident occurred. Voluntary intoxication will negate the specific intent element of the crime charged if the degree of intoxication is so great as to render the accused incapable of entertaining the intent. *People v King*, 210 Mich App 425, 428; 534 NW2d 534 (1995). In the present case, the evidence indicates that defendant had been drinking on the night of the assault. Several police witnesses testified that defendant did not appear visibly intoxicated at the time of his arrest. However, one witness testified that "he appeared to be highly intoxicated, almost to the point that he was unresponsive, passed out." When defendant arrived at the Macomb County Jail, Deputy Blount noticed that defendant smelled of alcohol. Blount asked defendant to take a breathalyzer test,

and defendant consented. He had a blood alcohol level of .10 approximately two hours after the incident. Defendant did not appear to Blount to be highly intoxicated, and he was able to carry on conversations and gave responsive answers to Blount's questions. Blount testified that he did not believe that a blood alcohol level of .10 reflected a serious level of intoxication. On this record, we find that defendant was not so intoxicated as to render him incapable of entertaining the intent to commit second-degree criminal sexual conduct.

Finally, defendant argues that the evidence was insufficient to support his conviction because the only evidence against him was the victim's testimony, which was inherently incredible. However, when reviewing a claim of insufficient evidence, this Court may not determine the weight and credibility of the evidence. *Herbert, supra* at 474. Therefore, the evidence was sufficient from which a rational trier of fact could have determined that the elements of assault with intent to commit second-degree criminal sexual conduct were established beyond a reasonable doubt.

Affirmed.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Hilda R. Gage