

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN LAMAR MASSEY,

Defendant-Appellant.

UNPUBLISHED

June 18, 1999

No. 210563

Washtenaw Circuit Court

LC No. 96-006548-FC

Before: Neff, P.J., and Hood and Murphy, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of criminal sexual conduct in the third degree against a person age thirteen to fifteen in violation of MCL 750.520d(1)(a); MSA 28.788(4)(1)(a). Defendant was sentenced to 2-1/2 to 15 years' imprisonment, and now appeals of right. We affirm.

As his sole issue on appeal, defendant argues that the evidence was insufficient to prove beyond a reasonable doubt that he sexually assaulted the victim. Specifically, defendant argues that the evidence presented at trial regarding the identity of the attacker is insufficient to support his conviction. We disagree.

Identity is always an essential element in a criminal prosecution. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976). Defendant admits in his brief that the victim identified defendant as the person who had committed the assault. During redirect examination, the victim testified as follows:

Q. Is there any doubt in your mind whatsoever, that it is the Defendant who you've identified in court as the person that performed --

A. No doubt.

Q. -- sexual intercourse against your will?

A. No doubt.

It is without question that the victim's testimony that defendant was the person who had sexually assaulted her need not be corroborated. MCL 750.520h; MSA 28.788(8).

Defendant argues that the lineup in which he was identified by the victim was improper because it did not include any of his same age blood-relatives who were at the gathering where the victim was assaulted. We find this argument to be without merit. Defense counsel was present at the lineup and expressly approved of its composition. Moreover, we find nothing in the record before us to suggest that the failure to include certain specific persons rendered the lineup invalid. See *People v Larry*, 162 Mich App 142, 155; 412 NW2d 674 (1987).

Defendant next argues that the victim's identification of defendant is not credible because the victim admitted that she drank alcohol and smoked some marijuana on the night of the assault and because her testimony contained various inconsistencies. We will not second-guess the trial court's determination of witness credibility in regard to such matters. *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1986).

Defendant's final argument is that because the victim testified "that she kept her eyes closed throughout the assault," the victim's testimony should be discredited. We disagree. The victim stated that she closed her eyes when the defendant inserted his penis inside her. She also testified that after she felt defendant pull out from inside her she watched him as he dressed. The victim thus had several opportunities to observe defendant and, as previously noted, she testified unequivocally that defendant was indeed the one who penetrated her.

Viewing the evidence in a light most favorable to the prosecutor, *People v Turner*, 213 Mich App 558, 565; 540 NW2d 728 (1995), we find sufficient evidence to sustain defendant's conviction.

Affirmed.

/s/ Janet T. Neff

/s/ Harold Hood

/s/ William B. Murphy