

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONNELL D. CUSICK,

Defendant-Appellant.

UNPUBLISHED

November 12, 1999

No. 210703

Wayne Circuit Court

LC No. 97 005424

Before: Whitbeck, P.J., and Gribbs and White, JJ.

MEMORANDUM.

Following a bench trial, defendant was convicted of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), and was sentenced to eighteen months' to fifteen years' imprisonment. Defendant appeals by right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the verdict of second-degree criminal sexual conduct is inconsistent with the facts of the case because all of the evidence adduced at trial established penetration instead of sexual contact. We disagree. The victim's testimony supports a finding of sexual contact. Although the victim also testified that there was penetration, the trial court was entitled, as trier of fact, to reject this portion of the victim's testimony in light of other evidence indicating that no penetration occurred while still relying upon the victim's testimony to find that sexual contact occurred. See CJI2d 3.6(1). This is not a case where a trial court has made conflicting findings that cannot be reconciled on the basis of the facts presented. See *People v Fairbanks*, 165 Mich App 551, 557; 419 NW2d 13 (1987) (conviction of assault with intent to commit second-degree criminal sexual conduct supported only by possession of firearm and acquittal on related charge of felony-firearm).

Defendant's due process rights were not violated. Viewing the evidence in a light most favorable to the prosecution, the evidence is sufficient to allow a rational trier of fact to find that the essential elements of second-degree criminal sexual conduct were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994). Absent extraordinary circumstances not present here, we will not disturb the factfinder's assessment of the victim's credibility. See *People v*

Lemmon, 456 Mich 625, 647; 576 NW2d 129 (1998); *People v Crump*, 216 Mich App 210, 215-216; 549 NW2d 36 (1996).

We also reject defendant's challenge to the proportionality of his sentence. The sentence is presumptively proportionate because it is within the sentencing guidelines range, and defendant has failed to overcome the presumption of proportionality by identifying the kind of unusual circumstances that would render a sentence within the guidelines range disproportionate. See, e.g., *People v Piotrowski*, 211 Mich App 527, 532-533; 536 NW2d 293 (1995).

Affirmed.

/s/ William C. Whitbeck
/s/ Roman S. Gibbs
/s/ Helene N. White