STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BARRY A. KNOWLES,

Defendant-Appellant.

UNPUBLISHED
January 28, 2000

No. 208786
Wayne Circuit Court
LC No. 97-500957

Before: Bandstra, C.J., and Holbrook, Jr. and Fitzgerald, JJ.

PER CURIAM.

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 six to fifteen years' imprisonment. He appeals as of right. We affirm.

Defendant first argues that the verdicts are inconsistent. Specifically, he contends that the trial court erred in acquitting him on three counts, but convicting him of one count of second-degree criminal sexual conduct, when the complainant's testimony was equally unclear on all counts. We disagree.

When presiding over a bench trial, a judge must decide the facts from the evidence presented and apply the law to those facts. *People v Cazal*, 412 Mich 680, 689; 316 NW2d 705 (1982). A judge must articulate the facts on the record along with conclusions of law in determining the outcome. *Id.* at 689; see also MCR 2.517(A). A trial court's factual findings are sufficient as long as it appears that the court was aware of the factual issues and correctly applied the law. *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992); *People v Edwards*, 171 Mich App 613, 620; 431 NW2d 83 (1988). We review a trial court's findings of fact for clear error. *People v Parker*, 230 Mich App 337, 338; 584 NW2d 336 (1998).

Here, the trial court made specific findings of fact and conclusions of law on the record. The court found, contrary to defendant's assertions, that sexual activity had occurred, but that the complainant was unable to differentiate the conduct into separate and distinct incidents. Because the trial court had a reasonable doubt as to the number of times that the activity occurred, the court convicted defendant of one count and acquitted him on the remaining three counts.

This verdict is not inconsistent and does not represent a compromise verdict. The trial court credited all of the complainant's testimony and disbelieved defendant's self-serving testimony. The court was simply unsure that the eight-year-old complainant was able to separate the conduct into distinct incidents. Therefore, the trial court's findings of fact were not clearly erroneous.

Defendant next argues that he was prejudiced because the prosecutor waived her opening statement. We disagree.

Both MCR 2.507(A) and MCR 6.414(B) require a prosecutor to make an opening statement unless the parties and the court agree otherwise. *People v Stimage*, 202 Mich App 28, 31; 507 NW2d 778 (1993). Because defense counsel and the trial court consented to the prosecutor's waiver, the prosecutor did not err in failing to make an opening statement. Furthermore, waiver of an opening statement does not constitute error absent prejudice to the defendant. *Id*. None of defendant's claims of prejudice are attributable to the prosecutor's waiver of an opening statement.

Affirmed.

/s/ Richard A. Bandstra
/s/ Donald E. Holbrook, Jr.
/s/ E. Thomas Fitzgerald