

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL A. BERGERON,

Defendant-Appellant.

UNPUBLISHED

April 21, 2000

No. 208844

Oakland Circuit Court

LC No. 97-152973-FH

Before: Gribbs, P.J., and Doctoroff and T. L. Ludington*, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction for second-degree criminal sexual conduct, MCL 750.520(c)(1)(a); MSA 28.788(3)(1)(a), entered after a jury trial. Defendant was sentenced as a third offense habitual offender to 3 $\frac{1}{2}$ to 25 years' imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The charge against defendant arose out of the touching of the five-year-old complainant when she spent the night with defendant's daughter. On appeal, defendant argues that there was insufficient evidence to support his conviction where complainant's testimony was confused and inconsistent.

In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution, and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). The testimony of complainant was sufficiently clear and detailed to support defendant's conviction. In assessing the sufficiency of the evidence, this Court will not interfere with a jury's resolution of credibility disputes. *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990).

Defendant also asserts that he was deprived of the effective assistance of counsel where counsel failed to request instructions on lesser included offenses or preserve the testimony of a missing witness.

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

The decision not to seek alternative instructions was a matter of trial strategy that will not be second-guessed on appeal. *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995). Where defendant failed to show that he was prejudiced by the absence of the testimony of the missing witness, there is no basis for finding that he was deprived of the effective assistance of counsel. *People v Pickens*, 446 Mich 298, 313; 521 NW2d 797 (1994).

Affirmed.

/s/ Roman S. Gibbs

/s/ Martin M. Doctoroff

/s/ Thomas L. Ludington