

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVE DIXON,

Defendant-Appellant.

UNPUBLISHED

August 18, 2000

No. 214693

Wayne Circuit Court

LC No. 97-008913

Before: Murphy, P.J., and Kelly and Talbot, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of third-degree criminal sexual conduct involving force or coercion, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). He appeals as of right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues on appeal that insufficient evidence was presented of force or coercion to sustain his conviction. Defendant contends that he could not be convicted of forcible rape where the complainant testified that she allowed him to have sex with her, he did not threaten her with any adverse consequences if she refused, and she did not resist in any way. We disagree.

In reviewing whether the evidence was sufficient to sustain a defendant's conviction, this Court views the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999).

Third-degree CSC requires proof beyond a reasonable doubt that sexual penetration was accomplished by force or coercion. MCL 750.520d(1)(b); MSA 28.788(4)(1)(b); MCL 750.520b(1)(f)(i) through (v); MSA 28.788(2)(1)(f)(i) through (v). "Force or coercion is not limited to physical violence but is instead determined in light of all the circumstances." *People v Brown*, 197 Mich App 448, 450; 495 NW2d 812 (1992). A complainant's testimony in a third-degree CSC prosecution need not be corroborated, MCL 750.520h; MSA 28.788(8), nor must the complainant have resisted the actor, MCL 750.520i; MSA 28.788(9).

Viewing the evidence in a light most favorable to the prosecution, sufficient evidence was presented of force or coercion. The complainant's testimony, which was corroborated in part by other witnesses and evidence, was found credible by the trial judge, sitting as trier of fact. We defer to the trial court's superior ability to assess the credibility of the witnesses who appear before it. MCR 2.613(C). Further, although the complainant did not physically resist the assault, evidence of resistance was unnecessary. MCL 750.520i; MSA 28.788(9); *People v Jansson*, 116 Mich App 674, 683; 323 NW2d 508 (1982). Accordingly, we conclude that a rational trier of fact could have found beyond a reasonable doubt that defendant committed third-degree CSC by force or coercion.

Defendant next argues that § 520i is void for vagueness and a violation of his right to privacy because it does not require the complainant to communicate nonconsent where there is a lack of affirmative evidence of force or coercion by the defendant. Because defendant failed to challenge the constitutionality of this statute before the trial court, appellate review may be deemed waived. *People v Gezelman (On Rehearing)*, 202 Mich App 172, 174; 507 NW2d 744 (1993). We decline to address the merits of these claims because they would not be decisive to the outcome of this case. *People v Grant*, 445 Mich 535, 546-547; 520 NW2d 123 (1994); *In re Hildebrant*, 246 Mich App 384, 389; 548 NW2d 715 (1996). To conclude, as defendant argues, that § 520(i) "countenances the possibility that one may unwittingly or inadvertently commit a rape," the evidence of defendant's assault of the complainant in the motel room would have to be viewed in a vacuum without consideration of all the circumstances of their relationship. Thus, as applied to defendant, § 520i was neither void for vagueness nor did it violate his right to privacy. See *People v Howell*, 396 Mich 16, 21-22; 238 NW2d 148 (1976) (vagueness challenges to statutes that do not involve First Amendment freedoms must be examined in the light of the facts of the case at hand); *People v Denmark*, 74 Mich App 402, 411-413; 254 NW2d 61 (1977).

Affirmed.

/s/ William B. Murphy
/s/ Michael J. Kelly
/s/ Michael J. Talbot