

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PHILLIP L. LEWIS,

Defendant-Appellant.

UNPUBLISHED

September 29, 2000

No. 211362

Wayne Circuit Court

Criminal Division

LC No. 97-009164

Before: McDonald, P.J., and Sawyer and White, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of criminal sexual conduct in the fourth degree, MCL 750.520e(1)(d); MSA 28.788(5)(1)(d), entered after a bench trial. We affirm.

Complainant, an inmate in the custody of the Michigan Department of Corrections (DOC), testified that on numerous occasions she and defendant, a corrections officer, engaged in sexual contact. Complainant stated that the sexual contact occurred in various locations, including the prison store where she was assigned to work. Complainant testified that after she reported the contact to prison officials, she began receiving numerous misconduct tickets, and her relationships with other inmates deteriorated.

Defense witnesses testified that they observed no inappropriate contact between complainant and defendant; however, a civilian storekeeper testified that on occasion complainant and defendant were absent from the store at the same time. Some witnesses contradicted complainant's testimony regarding timelines and defendant's ability to gain access to certain restricted areas without supervision.

In making findings of fact and conclusions of law, the trial court stated that the case turned on the credibility of the witnesses, particularly that of complainant. The court found complainant's testimony to be credible on the whole, and observed that she had no apparent motivation to lie about defendant. The court noted that the defense witnesses were guarded in their testimony, and that they seemed motivated to avoid saying anything that would reflect poorly on defendant. The court found defendant guilty as charged.

When reviewing a challenge to the sufficiency of the evidence in a bench trial, we view the evidence presented in a light most favorable to the prosecution, and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. The trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Petrella*, 424 Mich 221, 268-270, 275; 380 NW2d 11 (1985); *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

In a bench trial, the court must make findings of fact and state separately its conclusions of law. MCR 6.403. Findings are sufficient if it appears that the court was aware of the issues and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). We review a trial court's findings of fact for clear error. MCR 2.613(C); *People v Hermiz*, 235 Mich App 248, 255; 597 NW2d 218 (1999), *aff'd* 462 Mich 71; ___ NW2d ___ (2000).

In order to prove defendant guilty beyond a reasonable doubt, the prosecution was required to show that defendant engaged in sexual contact with complainant, that complainant was under the jurisdiction of the DOC, and that defendant was an employee of the DOC. MCL 750.520e(1)(d); MSA 28.788(5)(1)(d).

Defendant argues that the evidence was insufficient to support his conviction. We disagree and affirm. The undisputed testimony established that complainant was under the jurisdiction of the DOC, and that defendant was an employee of the DOC. Complainant testified that from time to time she and defendant engaged in sexual contact. Her testimony that she and defendant would conceal themselves in the store and engage in sexual contact was corroborated to the extent that a civilian storekeeper testified that from time to time complainant and defendant would be absent from the store at the same time. The court, as trier of fact, was entitled to weigh the testimony and conclude that complainant's testimony was for the most part worthy of belief. *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989). The court's attempt to reconcile certain contradictory testimony was erroneous; however, other evidence, in particular complainant's testimony regarding her contact with defendant during business hours at the store, was sufficient to sustain defendant's conviction. *Petrella, supra*.

Affirmed.

/s/ Gary R. McDonald
/s/ David H. Sawyer
/s/ Helene N. White