

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDDIE J. BRAND,

Defendant-Appellant.

UNPUBLISHED

July 31, 2001

No. 222178

Wayne Circuit Court

LC No. 99-001683

Before: Doctoroff, P.J., and Murphy and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction following a bench trial of three counts of third-degree criminal sexual conduct (CSC III), MCL 750.520d(1)(a), and pandering, MCL 750.455. We affirm.

Defendant first argues that the trial court erred when it convicted defendant of CSC III because there was insufficient evidence to sustain a conviction. We disagree.

Sufficiency of the evidence claims are reviewed de novo to determine whether there was evidence, viewed in a light most favorable to the prosecution, that would warrant a reasonable trier of fact to find guilt beyond a reasonable doubt. *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). MCL 750.520d(1) provides in relevant part:

A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and if any of the following circumstances exist:

(a) That other person is at least 13 years of age and under 16 years of age.

The trial court relied heavily on the victim's testimony, which detailed the alleged assaults during the incident in question, and defendant's threats against her life. The complainant specifically testified that defendant penetrated her mouth, vagina and anus with his penis. The complainant's testimony is enough for a factfinder to determine that penetration took place. MCL 750.520h. Further, the victim's age was not contested. Thus, there was sufficient evidence to establish defendant's guilt beyond a reasonable doubt. Defendant's argument attacks the

credibility of the victim. However, credibility is an issue left to the trier of fact. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

Defendant next argues that the trial court's erroneous factual conclusion that the victim bathed before her medical examination requires a new trial. Again, we disagree. MCL 769.26 provides:

No judgment or verdict shall be set aside or reversed or a new trial be granted by any court of this state in any criminal case, on the ground of misdirection of the jury, or the improper admission or rejection of evidence, or for error as to any matter of pleading or procedure, unless in the opinion of the court, after an examination of the entire cause, it shall affirmatively appear that the error complained of has resulted in a miscarriage of justice.

Error justifies reversal only if it is more probable than not that it affected the outcome. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). The trial court made detailed and numerous findings and conclusions. The court's reference to the victim having bathed may well relate to the state of the physical injuries sustained during the beatings and physical abuse that accompanied the sexual assaults. The absence or presence of semen was not outcome determinative to the court. The court acknowledged the lack of physical evidence and weighed it in relation to all the evidence. The court relied heavily on the victim's testimony, which detailed defendant's alleged penetrations. On this record, we conclude the trial court's erroneous factual finding was harmless error.

Finally, defendant argues that the prosecution failed to provide sufficient evidence to sustain the conviction for pandering.

The pandering statute provides, in relevant part:

Any person who shall procure a female inmate for a house of prostitution; or who shall induce, persuade, encourage, inveigle or entice a female person to become a prostitute . . . shall be guilty of a felony, punishable by imprisonment in the state prison for not more than 20 years. [MCL 750.455.]

Defendant argues the prosecution failed to establish that the complainant was not a prostitute before being enticed into the profession by defendant. We disagree.

A prosecutor must present evidence that the prostitute in question was not already engaged in prostitution before being enticed by the defendant in order to convict for pandering. *People v Morey*, 461 Mich 325, 337-338; 603 NW2d 250 (1999). A careful review of the record shows that the victim testified repeatedly that she was not a prostitute before encountering defendant. Therefore, there was sufficient evidence to sustain the conviction.

Affirmed.

/s/ Martin M. Doctoroff

/s/ William B. Murphy

/s/ Brian K. Zahra