STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEAN R. HOLLAND,

Defendant-Appellant.

UNPUBLISHED
December 28, 2001

No. 227609
Wayne Circuit Court
LC No. 99-003267

Before: Murphy, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for one count of first-degree criminal sexual conduct, MCL 750.520b(1)(a) (sexual penetration with a person under thirteen years of age), and one count of second-degree criminal sexual conduct, MCL 750.520c(1)(a) (sexual contact with a person under thirteen years of age). Defendant was sentenced to eleven to twenty years' imprisonment for the first-degree criminal sexual conduct conviction, and four to fifteen years' imprisonment for the second-degree criminal sexual conduct conviction, the two sentences to run concurrently. We affirm.

Defendant first argues that the trial court erred in denying defendant's motion for a directed verdict as to the first-degree criminal sexual conduct charge because the prosecution did not establish the element of penetration. We disagree.

"When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Aldrich*, 246 Mich App 101, 122-123; 631 NW2d 67 (2001), citing *People v Mayhew*, 236 Mich App 112, 124-125; 600 NW2d 370 (1999). First-degree criminal sexual conduct requires proof that the defendant sexually penetrated another person. *People v Reid,* 233 Mich App 457, 479; 592 NW2d 767 (1999). For purposes of fellatio, penetration requires the entry of the penis into another person's mouth. *Id.* at 480. Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the element of penetration. *People v Callahan,* 152 Mich App 29, 32; 391 NW2d 512 (1986).

Viewing the evidence in a light most favorable to the prosecution, we find that sufficient evidence was presented from which a rational trier of fact could find that penetration occurred.

The victim testified that defendant told him to pull down his pants, which he did, and then defendant pulled down his pants and laid down on top of the victim, facing the victim's feet. The victim stated that defendant was going up and down and his penis was by the victim's face. The victim also testified that defendant's penis was by his cheek, touching his cheek, and a white/yellow liquid from defendant's "private" ran down the victim's face and into his mouth. Specifically, when asked why he washed out his mouth with water, the victim stated that "something came out of his private and went in my mouth." A police officer testified that the victim told her that defendant's ejaculate was on his face and in his mouth. During a physical examination of the victim, the victim told the doctor that defendant had forced him to put defendant's penis in his mouth. The victim's mother testified that the victim had a bump on his mouth and his mouth was swollen. Given this evidence, a rational trier of fact could find beyond a reasonable doubt that penetration occurred.

Defendant also argues that he is entitled to a new trial because the verdict was against the great weight of the evidence or, in the alternative, because a new trial would be in the interest of justice. In essence, defendant argues that the trial court improperly denied his motion for a new trial. Again, we disagree.

This Court reviews a trial court's ruling on a motion for a new trial for an abuse of discretion. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). When based on the great weight of evidence, a new trial "should be granted only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result." *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). If the evidence is such that different minds would naturally and fairly come to different conclusions, the judge may not disturb the jury findings. *Id.* at 644.

Defendant claims that the evidence at trial overwhelmingly supported the conclusion that no sexual assault occurred. In support of this assertion, defendant gives specific examples of exculpatory evidence presented at trial. However, having reviewed the record, we cannot say that the evidence presented preponderates heavily against the verdict and that a serious miscarriage of justice has occurred. As defendant noted, the jury was confronted with diametrically opposed assertions of fact. The victim testified about the specific details of the alleged assault. The victim's mother noticed the smell of ejaculation on the victim and noticed that the victim's mouth was swollen and had a bump on it. The victim's examining doctor testified that even in cases where force is used, the physical findings are often none or very slight. He further testified that it is difficult to produce physical evidence even when a very aggressive sexual assault occurs. Although the doctor testified that he found no physical trauma or unusual findings, he also testified that he did not expect to find anything due to the victim's description of events. Viewing the evidence as a whole, we find that the verdict was not against the great weight of the evidence and that the trial court did not abuse its discretion in denying defendant's motion for a new trial.

Affirmed.

/s/ William B. Murphy
/s/ Janet T. Neff
/s/ Joel P. Hoekstra