

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIHAD MAHMOUD BAZZI,

Defendant-Appellant.

UNPUBLISHED

April 19, 2002

No. 229839

Oakland Circuit Court

LC No. 99-168165-FH

Before: K.F. Kelly, P.J., and Doctoroff and Cavanagh, JJ.

PER CURIAM.

Defendant appeals by right from a jury conviction of fourth-degree criminal sexual conduct, MCL 750.520e(1)(b), for which he was sentenced to two years' probation with the first sixty days in jail. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the trial court erred in denying his motion for a directed verdict at the close of the prosecutor's proofs. In ruling on a motion for a directed verdict, the trial court must consider in the light most favorable to the prosecutor the evidence presented by the prosecutor up to the time the motion is made and determine whether a rational trier of fact could have found that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to establish the elements of the crime. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). In deciding the motion, the trial court is not permitted to determine the credibility of witnesses, no matter how inconsistent or vague that testimony might be, *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997), because questions regarding the witnesses' credibility are for the trier of fact to determine. *People v Peña*, 224 Mich App 650, 659; 569 NW2d 871 (1997), mod 457 Mich 883 (1998). This Court applies the same standards in reviewing the trial court's ruling. *Schultz*, *supra* at 702.

The elements of the crime charged are that (1) the defendant engaged in sexual contact with another person and (2) the defendant used force or coercion to accomplish the sexual contact. MCL 750.520e(1)(b). Sexual contact is the intentional touching of the victim's buttocks or breasts or the clothing covering those areas "if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification." MCL 750.520a(c), (1). Force or coercion includes the situation in which the defendant overcomes the

victim through the actual application of physical force or physical violence. MCL 750.5203(b)(i). Force or coercion includes the exertion of strength or power on another person to compel an act against that person's will. *People v Premo*, 213 Mich App 406, 409-411; 540 NW2d 715 (1995). The victim need not resist the defendant. MCL 750.520i.

The evidence, when viewed in a light most favorable to the prosecutor, showed that defendant twice grabbed the victim's buttocks. Both times she rebuffed him. He asked her to go away with him, and then put his arms around her waist and intentionally fondled her breasts. The victim stated that defendant's grip was such that she could not get away from him and she had to elbow him to make him let go. Given the circumstances under which the touching was accomplished, it could reasonably be construed as being for the purpose of sexual arousal or gratification. *People v Duenaz*, 148 Mich App 60, 65; 384 NW2d 79 (1985). The evidence, if believed, was sufficient to prove the crime charged beyond a reasonable doubt. While other evidence called the victim's credibility into question, corroboration of her testimony was not required, MCL 750.520h, and witness credibility cannot be considered in determining the sufficiency of the evidence. The trial court properly denied defendant's motion for a directed verdict.

Defendant also contends that the court erred in denying his motion for a new trial on the ground that the verdict was against the great weight of the evidence. We review the trial court's ruling for an abuse of discretion. *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). However, we give substantial deference to a trial court's determination that a verdict is not against the great weight of the evidence. *Arrington, v Detroit Osteopathic Hosp Corp (On Remand)*, 196 Mich App 544, 560; 493 NW2d 492 (1992).

A motion for a new trial may be granted where the verdict was manifestly against the clear weight of the evidence, i.e., the evidence so clearly weighed in the defendant's favor that it would be a miscarriage of justice to allow the verdict to stand. *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998); *People v DeLisle*, 202 Mich App 658, 661; 509 NW2d 885 (1993). In reviewing a motion for a new trial on the ground that the verdict was against the great weight of the evidence, the judge must review the whole body of proofs. *People v Herbert*, 444 Mich 466, 475; 511 NW2d 654 (1993), overruled in part on other grounds *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998).

Generally, a verdict may be vacated only when it is not reasonably supported by the evidence and was more likely the result of causes outside the record, such as passion, prejudice, sympathy, or some other extraneous influence. *DeLisle, supra*; *People v Plummer*, 229 Mich App 293, 306; 581 NW2d 753 (1998). "Conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial" absent exceptional circumstances, as where the testimony contradicts indisputable physical facts or laws, the testimony is patently incredible or defies physical realities, the testimony is material and is so inherently implausible that it could not be believed by a reasonable juror, or the testimony has been seriously impeached and the case is marked by uncertainties and discrepancies. *Lemmon, supra* at 643-644, 647. The resolution of credibility questions is within the exclusive province of the jury, *DeLisle, supra* at 662, and this Court may not resolve them anew. *Gadomski, supra*.

As noted above, the evidence was clearly sufficient to sustain the verdict. The evidence taken as a whole was such that different minds could fairly come to different conclusions and,

while certain evidence did call the victim's credibility into question, the circumstances were not so exceptional as to warrant a new trial. *Lemmon, supra*. Accordingly, we find no abuse of discretion in the trial court's ruling.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh