

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CURTIS R. WEBSTER,

Defendant-Appellant.

UNPUBLISHED

April 23, 2002

No. 229879

Wayne Circuit Court

LC No. 99-010889

Before: Cooper, P.J., and Hood and Kelly, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of four counts of second-degree criminal sexual conduct (CSC), MCL 750.520c(1)(a). He was sentenced to concurrent terms of two to fifteen years' imprisonment and appeals as of right. We affirm.

The victim testified that she was between the ages of six and nine when defendant, her stepfather, inappropriately touched her on at least five occasions. The victim could not provide specific information regarding the dates of the abuse or the room of the home where the abuse occurred. The victim notified her mother of the sexual abuse, but the abuse continued. The victim's mother testified that she was aware of the allegations of abuse, but defendant denied the allegations when questioned. Eventually, the victim's mother responded to the allegations of abuse, moved her children from the marital home, and filed a complaint with police. The victim's mother denied that the abuse allegations arose only after defendant threatened to file for divorce. Defendant testified that he loved the victim and did not sexually abuse her. On one occasion, the victim's mother asked him to examine the victim's red and swollen vaginal area. Defendant testified that he touched the victim's vaginal area to see if it was tender and instructed the victim's mother to take the victim to the doctor. Defendant testified that his marriage with the victim's mother was failing because of her adultery and substance abuse. After he threatened to file for divorce, the sexual abuse allegations were raised. Thus, defendant's theory of the case was that the sexual abuse allegations were fabricated at the behest of the victim's mother, who would lose the marital home and other property acquired during the marriage. At the time of trial, the parental rights of the victim's mother had been terminated. The last visitation between the victim and her mother had occurred approximately three months prior to trial.

Defendant first alleges that there was insufficient evidence to support his convictions. We disagree. When evaluating a challenge to the sufficiency of the evidence, a reviewing court must examine the evidence in the light most favorable to the prosecutor and determine whether a

rational trier of fact could find that each element of the crime was proved beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *Id.* at 731-732, n 7. Defendant alleges that there was insufficient evidence to support the convictions because of the victim's inability to describe the abuse and identify dates and locations of the abuse. Defendant also cites to the threat of divorce as the underlying motive for fabrication of the abuse charges. In order to establish second-degree CSC, the prosecutor had to prove that defendant intentionally touched the victim's genital area for sexual purposes and that the victim was under the age of thirteen at the time of the act. See *People v Piper*, 223 Mich App 642, 645; 567 NW2d 483 (1997). Questions of credibility and intent are properly resolved by the trier of fact, *In re Forfeiture of \$25,505*, 220 Mich App 572, 581; 560 NW2d 341 (1996), and deference must be given to the trier of fact's determination. *People v Lemmon*, 456 Mich 625, 646; 576 NW2d 129 (1998). Where the issue involves credibility of two diametrically opposed versions of events, the test of credibility rests in the trier of fact. *Id.* at 646-647. The victim was unable to recall specific details surrounding the abuse, including whether she was clothed at the time of the acts. However, the victim testified that defendant touched her genital area on at least five occasions when she was between the ages of six and nine. The trier of fact may reasonably infer that the contact was for sexual purposes. *Johnson, supra*. In spite of any deficiencies in the delineation of the sexual abuse, the trial court concluded that the victim was credible, and we defer to that determination. *Lemmon, supra*. Applying the limitations on appellate review, we conclude that there was sufficient evidence to support the second-degree CSC convictions.

Defendant next alleges that the trial court abused its discretion when it denied defendant's motion for a bill of particulars. We disagree. The trial court may, in its discretion, order a bill of particulars. *People v Henry Johnson*, 427 Mich 98, 110; 398 NW2d 219 (1986). To determine whether the time or identification of the occasion is required by the prosecution, we consider: (1) the nature of the crime charged; (2) the victim's ability to specify a date; (3) the prosecutor's efforts to pinpoint a date; and (4) the prejudice to the defendant in preparing a defense. *People v Naugle*, 152 Mich App 227, 233-234; 393 NW2d 592 (1986). Where the victim is a child, time is not of the essence or a material element in a CSC case. *People v Stricklin*, 162 Mich App 623, 634; 413 NW2d 457 (1987). In response to the defense motion, the prosecutor delineated his efforts to correlate the sexual abuse to a particular time of season, holiday, or location, but the victim was unable to recall specifics. Defendant waived his preliminary examination that would have given him the opportunity to elicit dates from the victim. In response to the prosecutor's efforts, defendant did not move for remand to district court to hold a preliminary examination. Based on the circumstances, we cannot conclude that the trial court abused its discretion by denying defendant's motion.

Lastly, defendant alleges that the trial court reversibly erred by allowing testimony from the victim's mother contrary to MRE 803A. We disagree. Defendant failed to object to the admission of this testimony. Therefore, defendant bears the burden of demonstrating plain error that affected substantial rights, *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999), and he failed to meet this burden. Defendant was tried before a judge, and a judge is presumed

to possess an understanding of the law, that includes the difference between admissible and inadmissible evidence. *People v Wofford*, 196 Mich App 275, 282; 492 NW2d 747 (1992).

Affirmed.

/s/ Jessica R. Cooper

/s/ Harold Hood

/s/ Kirsten Frank Kelly