STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 23, 2002
v	No. 232182 Oakland Circuit Court
CELESTINO GARCIA, JR., Defendant-Appellant.	LC No. 2000-174116-FH

Before: Talbot, P.J., and Cooper and D.P. Ryan*, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of second-degree criminal sexual conduct, MCL 750.520c(1)(a). The trial court sentenced defendant as an habitual offender, fourth offense, to five to twenty years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The complainant in this case is the twelve-year-old friend of the daughter of defendant's former girlfriend, Kim Hatfield. The complainant was sleeping at the Hatfield home on the night on which the offense occurred. She and her sister slept on blankets on the floor while their friend slept in her bed. The complainant testified that during the night she awoke and found that defendant was touching her. Defendant had his hand inside her panties, and he rubbed her vaginal area. She remained covered by her blanket. Defendant told her he was adjusting Hatfield's daughter's blankets, and he left the room for the bathroom. After a few minutes in the bathroom, defendant went into the bedroom he shared with Hatfield.

Hatfield testified that the girls went to sleep at around 11:00 p.m. She last checked on them at about 2:00 or 2:30 a.m. when she went to bed. Defendant woke her at about 5:00 a.m. by knocking loudly on the door to their apartment. Hatfield let him in and suspected he was drunk. When Hatfield went back to sleep, defendant was in bed with her.

Defendant appeals his conviction of second-degree criminal sexual conduct. He argues that the prosecution presented insufficient evidence to support the conviction and asserts that the verdict is against the great weight of the evidence. We disagree.

* Circuit judge, sitting on the Court of Appeals by assignment.

To determine whether the prosecution presented sufficient evidence to sustain a conviction, this Court "must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, mod 441 Mich 1201 (1992). Second-degree criminal sexual conduct occurs when a person engages in sexual conduct with another person who is less than thirteen years old. MCL 750.520c(1)(a). "Sexual contact" is defined in MCL 750.520a(l) as, in part,

> the intentional touching of the victim's or actor's intimate parts or the intentional touching of clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification . . . .

Despite the inconsistencies noted by defendant in the complainant's testimony, when the evidence is considered in a light most favorable to the prosecution, it supports defendant's conviction. The complainant testified that defendant came into the room in which she slept and put his hand underneath her panties and rubbed her vaginal area. Clearly, this evidence satisfies a conviction of second-degree criminal sexual conduct.

Because defendant did not move for a new trial in the trial court, his argument that the verdict is against the great weight of the evidence is not preserved for appeal. *People v Noble*, 238 Mich App 647, 658; 608 NW2d 123 (1999). This Court need not address the issue absent manifest injustice. *Id*. Because the evidence does not clearly preponderate so heavily against the verdict that a miscarriage of justice would result if the verdict was allowed to stand, the verdict is not against the great weight of the evidence. *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001).

Affirmed.

/s/ Michael J. Talbot
/s/ Jessica R. Cooper
/s/ Daniel P. Ryan