

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DUVALL T. RISER,

Defendant-Appellant.

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UNPUBLISHED

August 6, 2002

No. 232023

Wayne Circuit Court

LC No. 00-004877

Before: Murray, P.J., and Sawyer and Zahra, JJ.

MEMORANDUM.

Defendant appeals as of right from convictions of four counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a), for which he was sentenced as an habitual offender, second offense, MCL 769.10, to concurrent terms of twelve to twenty years in prison. We affirm.

In reviewing a nonjury criminal case, this Court “is required to review the entire record to determine whether the trial judge clearly erred.” *People v Rush*, 48 Mich App 478, 482; 210 NW2d 467 (1973). This Court must review the record to determine whether there was sufficient evidence to warrant a verdict of guilty beyond a reasonable doubt. *People v Garcia*, 398 Mich 250, 263; 247 NW2d 547 (1976). The trial court’s factual findings are reviewed for clear error. A finding of fact is considered “clearly erroneous if, after review of the entire record, the appellate court is left with a definite and firm conviction that a mistake has been made.” *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991).

The elements of the crimes charged are (1) that defendant engaged in sexual penetration with another person, and (2) the other person was under the age of thirteen. MCL 750.520b(1)(a); CJI2d 20.1, 20.3; *People v Norman*, 184 Mich App 255, 260; 457 NW2d 136 (1990). Sexual penetration is defined as intercourse, cunnilingus, or any other intrusion, however slight, of any part of one person’s body into the genital opening of another person’s body; ejaculation is not required. MCL 750.520a(m). The victim need not resist and her testimony need not be corroborated. MCL 750.520h; MCL 750.520i.

Defendant does not dispute the sufficiency of the evidence per se. Rather, he contends that the victim’s testimony was so inconsistent that it did not prove beyond a reasonable doubt that he committed the crimes charged. “As a general rule, the trial judge, as trier of fact, has the duty to weigh the testimony and assess the credibility of the witnesses.” *People v Snell*, 118

Mich App 750, 755; 325 NW2d 563 (1982). The court “may choose to believe or disbelieve any witness or any evidence presented in reaching a verdict.” *People v Cummings*, 139 Mich App 286, 294; 362 NW2d 252 (1984).

Because the trial court is in the best position to judge credibility, this Court will not substitute its judgment for that of the trial court but will defer to the trial court’s resolution of factual issues that involve the credibility of witnesses. *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997); *People v Martin*, 199 Mich App 124, 125; 501 NW2d 198 (1993). Because this case turned on witness credibility, the trial court resolved that issue in the victim’s favor, and the victim’s testimony, if believed, was clearly sufficient to establish the elements of the crimes, the trial court did not clearly err in finding defendant guilty.

Affirmed.

/s/ Christopher M. Murray

/s/ David H. Sawyer

/s/ Brian K. Zahra