

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN WILLIAM LEWIS,

Defendant-Appellant.

UNPUBLISHED

August 9, 2002

No. 229161

Macomb Circuit Court

LC No. 97-002230-FH

Before: Bandstra, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Defendant appeals by right from his conviction by a jury of one count of first-degree criminal sexual conduct, MCL 750.520b(1)(b)(ii), and three counts of second-degree criminal sexual conduct, MCL 750.520c(1)(b)(ii). The trial court sentenced him to concurrent terms of 5 to 15 years' imprisonment for each conviction. We affirm.

Defendant first argues that the trial court improperly admitted evidence of other uncharged acts of sexual conduct between himself and the victim, who was his stepdaughter. We review a trial court's decision to admit evidence for an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

No error occurred here. Indeed, as noted by the trial court, the evidence was admissible to support the victim's credibility under the rationale of *People v DerMartzex*, 390 Mich 410, 413-415; 213 NW2d 97 (1973), *People v Puroll*, 195 Mich App 170, 171; 489 NW2d 159 (1992), and *People v Dreyer*, 177 Mich App 735, 738; 442 NW2d 764 (1989). See also *People v Sabin (After Remand)*, 463 Mich 43, 69-70; 614 NW2d 888 (2000).

The evidence was also admissible under a standard MRE 404(b) analysis. Indeed, the evidence was relevant to show a plan, scheme, or system with regard to defendant's assaults on the victim, *Sabin, supra* at 66, and was probative to dispute defendant's allegation that the charged assaults did not occur. *Id.* at 71. Moreover, the trial court provided a limiting instruction with regard to the evidence. Under these circumstances, the evidence was admissible even ignoring the *DerMartzex* rationale. Accordingly, appellate relief is unwarranted. See *People v Chavies*, 234 Mich App 274, 284; 593 NW2d 655 (1999) (this Court may affirm if the trial court reaches the right result for a different reason).

Next, defendant argues that the prosecutor presented insufficient evidence to justify the convictions. In reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that each essential element of the crime charged was proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). In doing so, we will not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999); *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Defendant was charged with first-degree criminal sexual conduct under MCL 750.520b(1)(b)(ii), which states:

(1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

* * *

(b) That other person is at least 13 but less than 16 years of age and any of the following:

* * *

(ii) The actor is related to the victim by blood or affinity to the fourth degree.

“Sexual penetration” is defined as “any . . . intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body. . . .” MCL 750.520a(1); *People v Hammons*, 210 Mich App 554, 557; 534 NW2d 183 (1995).

Defendant was also convicted of three counts of second-degree criminal sexual conduct under MCL 750.520c(1)(b)(ii), which states:

(1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

* * *

(b) That other person is at least 13 but less than 16 years of age and any of the following:

* * *

(ii) The actor is related by blood or affinity to the fourth degree to the victim.

At trial, the victim testified that, when she was fifteen years old, defendant, her stepfather, performed cunnilingus on her. She stated that defendant placed his tongue “in her vagina.” She also testified that defendant touched her breasts, sucked on her breasts, and forced her to masturbate him. Viewed most favorably to the prosecution, this testimony was sufficient to enable a rational trier of fact to find that defendant was guilty of the charged crimes beyond a reasonable doubt.

Moreover, defendant rests his insufficiency argument solely on the uncorroborated nature of the victim’s testimony. However, it was not necessary that the victim’s testimony be independently corroborated in order for defendant to be convicted. MCL 750.520h; *People v Lemmon*, 456 Mich 625, 642, n 22; 576 NW2d 129 (1998); *People v Smith* 149 Mich App 189, 195; 385 NW2d 654 (1986).

Affirmed.

/s/ Richard A. Bandstra
/s/ Michael R. Smolenski
/s/ Patrick M. Meter