

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL GAINOUS,

Defendant-Appellant.

UNPUBLISHED

March 23, 2004

No. 246024

Wayne Circuit Court

LC No. 01-013371

Before: Zahra, P.J., and Saad and Schuette, JJ.

PER CURIAM.

Defendant was charged with two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a). Following a nonjury trial, he was convicted of one count of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct, MCL 750.520c(1)(a), for which he was sentenced to prison terms of six to fifteen years and eighteen months to fifteen years, respectively. Defendant appeals his convictions as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. FACTS

This case arises from a sexual assault that occurred in late August or early September, 2001. The twelve-year-old victim testified that defendant forced her into his home, led her to the basement, and sexually assaulted her. According to the victim, when defendant could not get her shorts off, he pulled the crotch of the victim's shorts and underwear aside and inserted two fingers into her vagina. The defendant then attempted to have intercourse with the victim and placed his penis against her genital area.

II. ANALYSIS

Defendant's sole claim on appeal is that the evidence was insufficient to sustain the verdict. Defendant does not challenge the sufficiency of the evidence as it relates to the elements of the offenses. Rather, he contends that because the victim's testimony was somewhat inconsistent or contradictory, because she could not specify the date the incident occurred, and because no one could verify that the incident occurred, the court erred in finding that the evidence was sufficient to prove the crimes charged beyond a reasonable doubt. We disagree.

The exact date of the offense need not be proved unless time is of the essence of the offense, which it is not in a criminal sexual conduct case against a child victim. MCL 767.45(1)(b); *People v Stricklin*, 162 Mich App 623, 634; 413 NW2d 457 (1987). In addition, the victim's testimony need not be corroborated. MCL 750.520g.

"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 factfinder, be it the judge or the jury, "may choose to believe or disbelieve any witness or any evidence presented in reaching a verdict." *People v Cummings*, 139 Mich App 286, 293-294; 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). Given this general rule and the additional fact that witness credibility is a matter of weight, not sufficiency, of the evidence, *People v Scotts*, 80 Mich App 1, 9; 263 NW2d 272 (1977), we find no error.

Affirmed.

/s/ Brian K. Zahra
/s/ Henry William Saad
/s/ Bill Schuette