

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK ANTHONY GALLIMORE,

Defendant-Appellant.

UNPUBLISHED

June 15, 2004

No. 246017

Wayne Circuit Court

LC No. 02-007335

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

MEMORANDUM.

Defendant appeals as of right from a jury conviction of second-degree criminal sexual conduct, MCL 750.520c(1)(a), for which he was sentenced to ten to fifteen years in prison. We affirm.

Defendant first contends 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, which we note was in fact sufficient to prove the elements of the crime beyond a reasonable doubt. Rather, defendant contends that the evidence did not prove his guilt beyond a reasonable doubt because no one identified him at the scene and he testified that the offense did not occur. The victim's testimony need not be corroborated, MCL 750.520h, and a positive identification of defendant by witnesses may be sufficient to support a conviction despite the potential unreliability of such testimony. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Viewed in a light most favorable to the prosecution, the victim's testimony that defendant was the person who molested him "was sufficient to establish defendant's identity beyond a reasonable doubt. The credibility of the identification testimony was a matter for the trial court, as the trier of fact, to decide. We will not resolve it anew." *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988).

Defendant next contends that he was denied a fair trial due to prosecutorial misconduct. The issue has not been preserved because defendant did not object at trial. Therefore, review is precluded unless defendant establishes plain error that affected the outcome of the trial. *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003).

The prosecutor commented that defendant testified in great detail about his movements on the day he was arrested but said nothing about what transpired the day of the offense. Such testimony did not impermissibly shift the burden of proof but was fair comment on the evidence

offered by defendant. *People v Reid*, 233 Mich App 457, 477; 592 NW2d 767 (1999); *People v Godbold*, 230 Mich App 508, 521; 585 NW2d 13 (1998). The prosecutor never argued that defendant had to prove anything or otherwise produce any evidence. She commented only on the evidence defendant did produce, defendant's own testimony, which was not improper. *People v Fields*, 450 Mich 94, 117; 538 NW2d 356 (1995). Therefore, defendant has failed to establish plain error.

Affirmed.

/s/ Janet T. Neff

/s/ Brian K. Zahra

/s/ Christopher M. Murray