STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTONIO HINTON,

Defendant-Appellant.

UNPUBLISHED
June 15, 2004

No. 246221
Wayne Circuit Court
LC No. 02-000556-01

Before: Smolenski, P.J., and White and Kelly, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of third-degree criminal sexual conduct ("CSC III"), MCL 750.520d(1)(b), and one count of attempted assault with intent to commit criminal sexual conduct, MCL 750.520g(1). Defendant was sentenced as a third habitual offender, MCL 769.12, and sentenced to concurrent sentences of 10 to 25 years' imprisonment for the CSC III convictions and 7 to 10 years' imprisonment for the attempt conviction. Defendant appeals as of right. We affirm.

The facts are undisputed insofar as defendant admitted engaging in sexual relations with the complainant on the night of December 15, 2001, specifically oral and vaginal sex and attempted anal sex. The main issue before the court was whether the complainant consented. It was defendant's position that the complainant was a prostitute who had come to the party for the sole purpose of selling sex. Defendant argues on appeal that the trial court's findings and application of the law were clearly erroneous and, as a result, the court convicted defendant based on insufficient evidence.

A trial court's factual findings are reviewed for clear error. MCR 2.613; *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). In a criminal case, due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). Whether the evidence is sufficient to support a conviction is a question we review de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In reviewing the sufficiency of the evidence, 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 the essential elements of the crime were proven beyond a reasonable doubt. *Johnson*, *supra*. However, this Court should not interfere with the factfinder's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended 441

Mich 1201 (1992). It is for the trier of fact rather than this Court to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

We first address defendant's argument that revoked consent based on a failure to be paid was insufficient to constitute force or coercion, a necessary element of CSC III in this case. Defendant's argument presupposes that the trial court convicted defendant because it found that the complainant's initial consent was revoked when defendant did not pay her. After reviewing all the testimony taken in this case and the questions posed by the court in its role as factfinder, it is apparent to us that the court's comments were an attempt to indicate the improbability of defendant's version of events.

In rendering its decision in this case, the court began by stating:

> The Court had an opportunity to hear the testimony in this matter, to observe the witnesses while testifying, to take into consideration the consistencies and inconsistencies both within and between the testimony.
>
> The Court has had an opportunity to view the exhibit that was admitted and to hear the arguments that have been presented by counsel.
>
> Just off the top, I don't know if this is because everybody, the attorneys are both men or nobody has thought it through, but the argument that has been put before the Court is, because this woman was a prostitute, that she consented. Even if she was a prostitute, she only consented if she got paid. If she didn't get paid, she wasn't consenting to sex without getting paid.

Defendant's argument regarding revoked consent stems from these comments, particularly from the last two above-quoted sentences. The court was responding to defendant's contention that the complainant was a prostitute who agreed to be paid after the sexual acts were completed. When the court said, "If she didn't get paid, she wasn't consenting to sex without getting paid," we believe the court was not making a finding of fact, but rather was indicating its belief that prostitutes do not consent to sex unless they get paid. Payment is the *precursor* to consent.

The court's subsequent statements support this interpretation.

> She didn't get paid. He didn't intend to pay her when he went in there because he said so, I let her in free, she got to eat for free, so why should I have to pay her.
>
> And then when she ran out the house, he didn't run out the house, say man, give me the money right quick so I can give her her money. Prostitutes aren't consenting to free sex. Prostitutes, if they're consenting to sex, intend to be compensated for their work.

These statements show that the court did not believe defendant's theory in light of a prostitute's standard operating procedure and the fact that, if defendant's testimony was to be believed, the complainant ran from the apartment after allegedly being told by defendant to wait in the living

room for her money, and on seeing defendant outside did not demand to be paid, but rather told a friend how good defendant was. Thus, the court's comments indicated that it believed the complainant's actions were inconsistent with that of a prostitute's.

The court further stated:

> The testimony that I heard makes me believe that that night, the defendant believed any woman in the house, that came in the house was a prostitute. The woman that brought the food wanted sex. The woman that came to visit the friend wanted sex. The woman that was sitting there when he got there wanted sex. The women that came in afterwards all wanted sex and they all wanted it with him.
>
> I am satisfied that the complainant was afraid when he walked in on her in the bathroom. I am satisfied that acting under that fear, she was forced to engage in at least one incident of vaginal sex, one incident of oral sex, and one attempt incident of anal sex.

When the court's decision is read in context, as a whole, it is clear that the court did not find that the complainant was a prostitute, nor did it base its decision on a theory of revoked consent. The court did find that defendant believed all the women present in the house that night wanted to have sex, irrespective of their actual desires. And the court found that the complainant was afraid; this fear being the reason she complied with defendant's demands. Therefore, we need not address the validity of defendant's revoked consent argument.

Next, we turn to defendant's claim that his convictions must be reversed because there was insufficient evidence of force or coercion. To establish the force or coercion necessary to a charge of third-degree criminal sexual conduct, a prosecutor need not show that the defendant overcame the victim. *People v Carlson*, 466 Mich 130, 140; 644 NW2d 704 (2002). Rather, the necessary force must be that which allows the accomplishment of sexual penetration when absent the force the penetration would not have occurred. The prohibited force encompasses the use of force to either induce the victim to submit to sexual penetration or to seize control of the victim in a manner to facilitate the accomplishment of sexual penetration without regard to the victim's wishes. *Id*.

The complainant testified that she was terrified when defendant walked in on her in the bathroom and told her to get on her knees. She told defendant not to make her do it, but he threatened to hit her if she did not comply. In order to assist in her compliance, defendant pushed her down to the ground by her shoulders. The complainant also testified that when a friend came to check on her, defendant told the complainant to be quiet or he'd kill her. A few minutes later, another friend checked on the complainant and through the cracked door the witness could see the complainant mouth, "Help me." Subsequently, the people present at the party gathered outside the bathroom door and someone tried to open it with a coat hanger. When defendant opened the door, all the witnesses, including defendant, agreed that the complainant ran straight outside into the parking lot.

Furthermore, testimony from another witnesses revealed that although defendant was not a large man, his demeanor could be extremely intimidating. This witness, a friend of the

homeowner, stated that defendant tried to engage her in oral sex. When she refused, he began yelling profanities at her. "He was very intimidating, you know. I was really afraid because he was just irate." It was undisputed that the complainant was a very petite woman, and according to her testimony, defendant's words and tone were enough to secure her compliance. The court had the opportunity to observe her on the stand and determine if she was the type of person who would frighten easily. Because defendant also testified, the court was able to assess defendant's personality, which was by all accounts extremely arrogant. Defendant was the only witness to testify that the complainant attended the party for the sole purpose of selling sex. The court was free to reject defendant's version of events. Credibility determinations and the weight afforded evidence are within the purview of the factfinder and will not be disturbed by this Court. *Wolfe, supra* at 514-515. Additionally, although there were inconsistencies between the prosecution witnesses' testimony, all conflicts are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Viewing all the evidence in the light most favorable to the prosecutor, we find that there was sufficient evidence to support defendant's convictions. *Johnson, supra*.

Affirmed.

/s/ Michael R. Smolenski
/s/ Helene N. White
/s/ Kirsten Frank Kelly