

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE KEITH HENDERSON,

Defendant-Appellant.

UNPUBLISHED

September 21, 2004

No. 248603

Wayne Circuit Court

LC No. 03-000750-01

Before: Cavanagh, P.J., and Smolenski and Owens, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree criminal sexual conduct (force or coercion), MCL 750.520b(1)(f), and aggravated assault, MCL 750.81a. Defendant was sentenced to thirty to fifty years in prison for his first-degree criminal sexual conduct conviction as a fourth habitual offender, MCL 769.12, and to time served for the assault conviction. We affirm.

Defendant first argues there was insufficient evidence to sustain his conviction of first-degree criminal sexual conduct. We disagree. A claim of insufficient evidence is reviewed de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the offense were proven beyond a reasonable doubt. *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001). This court will not interfere with the jury's role of determining the weight of the evidence or deciding the credibility of the witnesses. *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004).

First-degree criminal sexual conduct accomplished by force or coercion, MCL 750.520b(1)(f), requires the prosecutor to prove sexual penetration through the use of force or coercion causing personal injury to the victim. *People v Lemons*, 454 Mich 234, 253; 562 NW2d 447 (1997). The definition of sexual penetration is 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, but emission of semen is not required. MCL 750.520(a)(o); *People v Hammons*, 210 Mich App 554, 557; 534 NW2d 183 (1995). The force or coercion element of first-degree criminal sexual conduct includes, but is not limited to, physical force or violence, threats of force, threats of retaliation, inappropriate medical treatment, or concealment or surprise. MCL 750.520b(1)(f); *People v Brown*, 197 Mich App 448; 495 NW2d 812 (1992).

Here, the victim testified that defendant “took his penis out and he put it in my vagina, the head of the penis.” The prosecution also asked the victim:

Q. You said that—Did any portion of his penis enter your vagina?

A. The head.

The victim’s above testimony was sufficient to establish that defendant’s penis penetrated her vagina. Even if there was insufficient evidence of vaginal penetration, evidence of penetration of the labia majora is sufficient to satisfy the elements of first-degree criminal sexual conduct. See *People v Bristol*, 115 Mich App 236, 238; 320 NW2d 229 (1981). The victim testified that defendant had rubbed his limp penis along the inside of her thighs and on her vagina when he could not attain an erection. She stated that, because of the rubbing action, defendant spread the outer lips of her vagina (the labia majora) with his penis. This testimony is sufficient to show that defendant did penetrate the victim’s genital opening such as to constitute penetration under the law.

Defendant next argues that the lower court lacked sufficient evidence to score offense variable seven (OV 7) at fifty points. Again, we disagree. In a sentencing appeal, a trial court has discretion in scoring the sentence guidelines, but we review the factual findings for clear error. MCR 2.613(C); *People v Hicks*, 259 Mich App 518, 522; 675 NW2d 599 (2003).

The trial court must assess a score of fifty points under OV 7 if a “victim is treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense.” MCL 777.37(1)(a). In finding excessive brutality on the part of defendant, the court referred to the victim’s testimony in which she detailed ten forceful blows she received, the thirty to forty minutes of fighting between her and defendant, the act of the rape itself, and how her sons were present during the attack and tried desperately to help her. Defendant, by choosing to commit the assault while the victim’s children were present in the home, increased her fear and anxiety for their safety, especially when they attempted to help her by attacking defendant. The lower court addressed defendant during sentencing as follows:

And your decisions apparently led you to commit a very, very violent rape, not only was it bad enough that you committed this very, very violent rape upon [the victim], but also in front of her children.

The evidence of record supports the trial court’s scoring of OV 7 at fifty points.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski
/s/ Donald S. Owens