STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARMANDO AYALA,

Defendant-Appellant.

UNPUBLISHED
October 12, 2004

No. 249827
Barry Circuit Court
LC No. 03-100088-FH

Before: Neff, P.J., and Smolenski and Schuette, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of two counts of criminal sexual conduct in the first degree ("CSC I"), MCL 750.520b(1)(a).[1] On July 7, 2003, defendant was sentenced to 180 to 360 months imprisonment for each count of CSC I. We affirm.

This case involves the repeated sexual assaults of an eleven-year-old girl by her mother's boyfriend, defendant Armando Ayala. Defendant contends that the trial court erred in denying his motion for directed verdict because there was insufficient evidence of penetration. "When reviewing a trial court's decision on a motion for a directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in a light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). "This Court will not interfere with the role of the trier of fact of determining the weight of the evidence or the credibility of witnesses." *People v Hill*, 257 Mich App 126, 141; 667 NW2d 78 (2003).

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

[1] Defendant was also convicted of two counts of criminal sexual conduct in the second degree ("CSC II"), MCL 750.520c(1)(a), one count of accosting a minor, MCL 750.145a, and one count of furnishing alcohol to a minor, MCL 436.17011a. He was sentenced 120 to 180 months for each count of CSC II, 153 days for accosting a child, and 60 days for furnishing alcohol to a minor, all of which are to be served concurrently. These convictions and sentences are not involved in this appeal.

person is under 13 years of age." MCL 750a(1)(a). There was no dispute in this case that the victim was under thirteen years of age; rather, the issue is whether there was sufficient evidence to persuade a rational trier of fact that the element of penetration was satisfied.

Subsection (o) of MCL 750.520a defines "sexual penetration" as "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other 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." The victim testified that defendant "would put his fingers inside from my private." When asked how she knew that his fingers were inside of her private, she said, "Because after – if – when I would move, I would -- I would feel his hand come – come – come off." In other words, the defendant put his fingers inside her genital opening, and she knew they were inside because she could feel them. The eleven-year-old victim's description of the assaults, although lacking the grace and precision of someone with a more sophisticated command of the language, is sufficiently clear to support the inference that the defendant penetrated her genital opening. Indeed, "[c]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant, however, asserts that because defendant's brother also penetrated the victim, the medical evidence did not corroborate the victim's testimony. He essentially argues that because the prosecution could not exclude the possibility that his brother's sexual penetration of the victim caused the hymenal injury, there is insufficient evidence to show penetration beyond a reasonable doubt. This argument is not persuasive because the prosecution "is not obligated to disprove every reasonable theory consistent with innocence to discharge its responsibility." *Id.* Rather, the prosecution is only required to convince the jury, in the face of whatever contradictory evidence the defendant may provide, that the elements of the crime have been proven beyond a reasonable doubt. *Id.* In this regard, Dr. Simms testified that defendant's brother's assault occurred two weeks before the examination, it usually takes six weeks for this type of injury to heal, and the victim's hymenal injury was healed. His testimony tends to exclude defendant's brother as the cause of her hymenal injury, and it was for the jury to determine the weight of this evidence.

Even if the victim's testimony was not corroborated by testimony from the examining physician, reversal of defendant's CSC I convictions would not be required. MCL 750.520h states that the "testimony of a victim need not be corroborated in prosecutions under sections 520b to 520g." Moreover, as noted by the Michigan Supreme Court, "[I]t is a well established rule that a jury may convict on the uncorroborated evidence of a CSC victim." *People v Lemmon*, 456 Mich 625, 643 n 22; 576 NW2d 129 (1998). Therefore, because the evidence was sufficient for a rational trier of fact to conclude that the element of penetration was satisfied, we find that the trial court did not err in denying defendant's motion for a directed verdict and affirm defendant's two CSC I convictions.

Affirmed.

/s/ Janet T. Neff
/s/ Michael R. Smolenski
/s/ Bill Schuette