

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER PATRICK MAXWELL,

Defendant-Appellant.

UNPUBLISHED

January 22, 2008

No. 267247

Bay Circuit Court

LC No. 05-010032-FH

Before: Beckering, P.J., and Sawyer and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction following a jury trial of indecent exposure, MCL 750.335a, and being a disorderly person (obscene conduct in a public place), MCL 750.167(1)(f). The jury found defendant not guilty of one count of accosting a minor for immoral purposes, MCL 750.145a(a), and deadlocked on another accosting count. Defendant was sentenced to 365 days in jail with 325 days credit for indecent exposure and to 90 days in jail with 90 days credit for disorderly person. We affirm. This case is being decided without oral argument under MCR 7.214(E).

Defendant's sole argument on appeal is that insufficient evidence was adduced below to support his conviction for indecent exposure. We disagree. We review an insufficiency of evidence claim de novo to determine whether the evidence, when viewed in the light most favorable to the prosecution, would justify a rational trier of fact in finding that all the elements of the crime were proven beyond a reasonable doubt. *People v Lange*, 251 Mich App 247, 250; 650 NW2d 691 (2002). The issue of the credibility of the witnesses presents an issue for the trier of fact to resolve, and we do not address credibility questions anew. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Circumstantial evidence and reasonable inferences that arise from the evidence can constitute sufficient proof of the elements of the crime beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

An indecent exposure occurs when a person knowingly makes any open or indecent exposure of his person or of the person of another. *People v Neal*, 266 Mich App 654, 656; 702 NW2d 696 (2005); MCL 750.335a. In the present case, defendant does not dispute that an open or indecent exposure involving masturbation occurred, but rather that he was the individual who committed any such exposure. Specifically, defendant asserts that the victim of the indecent exposure was unable to identify him in a line-up or in court. Defendant further asserts that the

victim identified her assailant as dark skinned or Hispanic when defendant is not dark skinned because he “is a Scot.”

Although the victim to the indecent exposure did not identify defendant as her assailant, she testified that she was in the school parking lot getting her books out of her car when she heard a man’s voice say, “Hey baby.” The driver of a black car had his window partially rolled down, and the victim could see that the man was masturbating. It was approximately 7:30 a.m., and the victim identified the vehicle license plate as containing both a “Z” and a “B.” The victim thought that the perpetrator was dark skinned or Hispanic, but she did not get a good look at him. Other females reported being approached by a man in a dark vehicle within the same area at approximately the same time. One of these females was able to obtain a license plate number of “ZBE 859.” A school liaison for the local high school was assigned to prevent loitering and to check license plates. She observed a dark vehicle with the license plate number “ZBE 889,” and the license plate number was assigned to a vehicle driven by defendant. Although the victim of the indecent exposure was unable to identify defendant as her assailant, the female student who obtained a full license plate number identified defendant as the person driving a black car who made statements to her.

In light of the circumstantial evidence and the reasonable inferences that arise from this evidence, there was sufficient evidence to convict defendant of indecent exposure. The fact that the victim may have been mistaken about the ethnicity of the perpetrator is not dispositive. The jury is “free to believe or disbelieve, in whole or in part, any of the evidence presented at trial.” *People v Eisenberg*, 72 Mich App 106, 115; 249 NW2d 313 (1976). Thus, the jury was entitled to conclude that defendant perpetrated the offense and that the victim was mistaken in her description. Accordingly, defendant’s challenge to the sufficiency of the evidence is without merit.¹

Affirmed.

/s/ Jane M. Beckering
/s/ David H. Sawyer
/s/ Karen M. Fort Hood

¹ Defendant does not address each conviction and the elements of each offense. Rather, the defense makes a blanket challenge to sufficiency by concluding that the victim was not credible because she did not make a positive identification and did not accurately describe defendant’s ethnicity. However, there also was sufficient evidence to convict defendant of disorderly person, MCL 750.167(f), for the reasons stated above. There was sufficient circumstantial evidence to support this conviction. *Carines, supra*.