

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEREMY GERMAIN RUCKER,

Defendant-Appellant.

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UNPUBLISHED

October 23, 2008

No. 280082

Wayne Circuit Court

LC No. 07-006144-01

Before: Servitto, P.J., and Donofrio and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of second-degree criminal sexual conduct, MCL 750.520c(1)(e) (weapon used), and assault with intent to commit criminal sexual conduct, MCL 750.520g(1). Defendant was sentenced to 4 to 15 years' imprisonment for each conviction. We affirm.

Defendant's sole issue on appeal is that there was insufficient evidence to support his identification as the person who committed the crimes. We disagree. When reviewing a claim of insufficient evidence, this Court reviews the record de novo. *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). This Court reviews the evidence in the light most favorable to the prosecution to determine whether it would justify a rational jury's finding that the essential elements of the crime were proven beyond a reasonable doubt. *Id.*

Defendant argues that the prosecution's evidence was insufficient for a reasonable trier of fact to conclude that he was the perpetrator. He argues that this is a case of mistaken identity, where inherently unreliable and incredible eyewitness testimony was used to convict him. Defendant contends that the inconsistency of the victim's initial description of the perpetrator and his actual appearance exemplify the unreliability of her identification. The victim told police that defendant was six feet tall when in fact he is substantially shorter. Also, the perpetrator grinned at the victim during the assault, but she did not notice anything wrong with his teeth, when, in fact, defendant showed at trial that he has a missing tooth. Moreover, defendant argues the testimony of an eyewitness to the assault, Shabora Kelly, was unreliable and incredible. Kelly told police she only "sort of" got a look at the perpetrator and that she could not describe his eyes, nose, or mouth, instead, basing her identification of defendant on his ears. In addition, she originally told police the perpetrator looked "Arabic" when, in fact, defendant is African-American. As such, defendant argues that these identifications are insufficient to establish him as the perpetrator beyond a reasonable doubt. We disagree.

The credibility of identification testimony is a question for the trier of fact that this Court will not decide over again. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Additionally, a positive identification by witnesses may be sufficient to support a conviction of a crime. *Id.* There is no requirement that a victim's testimony be corroborated in a criminal sexual conduct prosecution. *People v Drohan*, 264 Mich App 77, 89; 689 NW2d 750 (2004), *aff'd* 475 Mich 140 (2006). It is the case, though, that the Michigan Supreme Court and the United States Supreme Court have recognized problems with the trustworthiness and inherent possibility of error when relying on the subjective accuracy of eyewitness identifications. *United States v Wade*, 388 US 218, 228-232; 87 S Ct 1926; 18 L Ed 2d 1149 (1967); *People v Anderson*, 389 Mich 155, 180; 205 NW2d 461 (1973), overruled on other grounds *People v Hickman*, 470 Mich 602 (2004). However, this Court has declined to read that language as a general proscription against the use of such evidence. *Davis*, *supra* at 705-706.

In a case where the general reliability of eyewitness testimony is challenged, this Court looks to the same factors as the admissibility of an in-court identification obtained following an impermissibly suggestive identification procedure. *Davis*, *supra* at 701-705. The relevant factors for this case are (1) opportunity to observe the offense, including length of time, lighting, and proximity to the criminal act, (2) length of time between the offense and the disputed identification (3) accuracy of description compared to the defendant's actual appearance, and (4) the nature of the offense and the victim's age, intelligence, and psychological state. *Id.* at 702-703.

Viewing the evidence in the light most favorable to the prosecution, the evidence shows that the victim was face to face with the perpetrator throughout the entire assault. While she could not recall how long the assault went on for, she testified there was sufficient lighting because the dome light of her car was on and it was still light outside. Therefore, there was a great opportunity to observe the perpetrator. In addition, the victim had no difficulty in identifying defendant in a photographic lineup just over a year after the assault. While this is a lengthy period of time, delays as long as eighteen months after the offense will not necessarily invalidate an eyewitness identification. *People v Kurylczyk*, 443 Mich 289, 307-308; 505 NW2d 528 (1993).

The victim also worked with a sketch artist the day after her assault to create a composite sketch of the perpetrator. The trial court credited the sketch as having a striking resemblance to defendant. Moreover, she provided an accurate description of defendant's complexion. Based on the above, there was sufficient evidence to support the identification. Additionally, there was no evidence that the 24-year-old victim (22 at the time of the offense) suffered intellectually or psychologically in a way that would impair her identification of defendant despite the traumatic experience of being sexually assaulted. Defendant attacks the victim's identification of defendant on the grounds that she inaccurately described defendant's height. However, she only saw him standing when they passed by each other before the assault. The remainder of the time defendant was on top of the victim. Defendant also points out that the victim did not notice that he was missing a tooth even though he was grinning at her during the assault. Despite this fact, there was no evidence at trial of when defendant lost that tooth.

The other witness, Kelly, had an opportunity to observe the perpetrator from about fifteen feet away, and saw him when he turned toward her after getting out of the victim's car. She then observed him running away while she hid beneath a car. Though not detailed in her description

of defendant, Kelly testified that she was able to identify defendant based on his ears. She was also accurate in describing his height and complexion. It is apparent that Kelly only saw the perpetrator for a short time, but she had an opportunity to observe the perpetrator and was reasonably accurate in what she was able to describe. The trial court credited her testimony and her identification of defendant as the perpetrator.

Again, the credibility of eyewitness testimony is left for the trier of fact to decide. *Davis, supra* at 700. Any inconsistencies between the descriptions by the two witnesses are not enough to preclude the trier of fact from reasonably concluding that defendant was the perpetrator. While witnesses contradicted each other on whether the perpetrator looked like Lionel Ritchie and his height, the trial court concluded that, based on all the evidence, these inconsistencies and the problems with the witnesses' descriptions when independently compared to defendant were not enough to raise a reasonable doubt. There was sufficient evidence to support defendant's convictions.

Affirmed.

/s/ Deborah A. Servitto  
/s/ Pat M. Donofrio  
/s/ Karen M. Fort Hood