STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 18, 2008
v	No. 277926 Oakland Circuit Court
ANTHONY CORNELL JACKSON, Defendant-Appellant.	LC No. 2006-208353-FH

Before: Zahra, P.J., and Cavanagh and Meter , JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of assault and battery. MCL 750.81. He was sentenced to a fine of $500 plus costs. We affirm.

Defendant was the victim's tenth-grade math teacher. The victim testified that, in November/December 2005, defendant requested sexual relations and touched her left thigh and vaginal area when she approached him for help with a math problem during her sixth period class. On January 23, 2006, defendant embraced and requested a kiss from the victim when she tried to retrieve her coat from defendant in a small office adjacent to his classroom ("the closet"). The victim verbally refused to kiss defendant and physically resisted his embrace. Defendant was acquitted of a charge of fourth-degree criminal sexual conduct, but was convicted of assault and battery for the January 23, 2006, incident. Defendant argues that his guilty verdict was against the great weight of the evidence, and that the trial court abused its discretion in denying his new trial motion. In making his arguments, he claims that there was insufficient evidence to sustain a conviction on the assault and battery charge, the victim's testimony was inconsistent and lacked credibility, and the trial court failed to give appropriate weight to "more reliable" witnesses that were presented by defendant. Defendant also alleges that the trial court erred when it relied on the testimony of the victim's friend, Keyvonte Luster, whose testimony at trial did not corroborate the victim's allegations regarding the January 2006 assault and battery, but instead appeared to reference the November/December 2005 incident.

A trial court's denial of a motion for a new trial based on the great weight of the evidence is reviewed for an abuse of discretion. *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008). Determining whether a verdict is against the great weight of the evidence involves an examination of the whole body of proofs, which may include "issues of credibility or circumstantial evidence," *In re Robinson*, 180 Mich App 454, 463; 447 NW2d 765 (1989). However, as our Supreme Court has noted, if there is conflicting evidence, the question of

credibility ordinarily should be left for the factfinder. *People v Lemmon*, 456 Mich 625, 642-643; 576 NW2d 129 (1998). The test is whether the evidence "preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Campbell v Sullins*, 257 Mich App 179, 193; 667 NW2d 887 (2003). Furthermore, the standard established in *Lemmon*, *supra* at 646-647 specifically provided that credibility determinations are generally left to the trier of fact, unless contradictory evidence deprived the testimony of all "probative value . . . contradict[ed] indisputable physical facts" or defied "physical realities." *Id*. Additionally, the trial court's factual findings in a bench trial will not be reversed unless clearly erroneous; a finding "is clearly erroneous where, although there is evidence to support it, the reviewing court is firmly convinced that a mistake has been made." *In re Forfeiture of United States Currency*, 164 Mich App 171, 179; 416 NW2d 700 (1987).

MCL 750.81 provides in relevant part:

> (1) Except as otherwise provided in this section, a person who assaults or assaults and batters an individual, if no other punishment is prescribed by law, is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than $500.00, or both.

A simple criminal assault is "an attempt to commit battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery" *People v Reeves*, 458 Mich 236, 240; 580 NW2d 433 (1998). Battery is ". . . the consummation of the assault," *People v Rivera*, 120 Mich App 50, 55; 327 NW2d 386 (1982), and is "an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person," *Reeves*, *supra* at 240 n 4. The absence of physical injury is irrelevant to an assault and battery charge. *People v Terry*, 217 Mich App 660, 662; 553 NW2d 23 (1996).

Reviewing the whole proofs of the case, the trial court's decision to find defendant guilty of assault and battery was not against the great weight of the evidence. The trial court clearly stated its reasoning on the record when it evaluated the evidence and acknowledged the shortcomings of both the victim's and Luster's testimony. It ultimately determined their testimony was credible related to the assault and battery. The victim testified she was present in defendant's math class on January 23, 2006, despite defendant's attendance roster marking her absent. In addition, the placement of the victim's coat in defendant's closet was substantiated by Luster. Therefore, defendant's assertion that "more reliable testimony" was provided at trial by the school's teachers and principal is not proper and cannot override a judicial determination of witness credibility. Any "inconsistencies" in the victim's or Luster's testimony did not deprive it of "all probative value," defy "physical realities," or "contradict indisputable facts." *Id*. at 646-647. Because the verdict was not against the great weight of the evidence, the trial court did not abuse its discretion in denying the new trial motion.

We further conclude that, contrary to defendant's argument, the victim's testimony that she verbally refused and pushed defendant away when he embraced her in the closet and asked her for a kiss was sufficient to establish the elements of assault and battery under MCL 750.81(1) beyond a reasonable doubt. Under the highly deferential sufficiency standard, a reviewing court must not only review "the evidence in a light most favorable to the prosecution," *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); see, also, *People v Nowak*, 462 Mich 392,

399-400; 614 NW2d 78 (2000), but must also respect the trier of fact's determinations regarding the proper weight to be given to inferences drawn from the evidence. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). The victim's testimony establishes that a nonconsensual, unwanted, or offensive touching of the victim occurred in January 2006.

Finally, we hold that the trial court did not clearly err when it relied on Luster's testimony regarding the January 2006 assault in the closet. A trial court's factual findings shall not be reversed unless clearly erroneous; a finding is "clearly erroneous where, although there is evidence to support it, the reviewing court is firmly convinced a mistake has been made." *In re Forfeiture of United States Currency*, *supra* at 179. As indicated in the trial court record, it is clear that the trial court did not rely on Luster witnessing the January assault. The trial court relied on Luster's testimony only to help establish that an offensive touching had occurred and that defendant had opportunity to commit that touching as he was near the closet before it took place. The assault and battery, as described above, was established independently through the victim's testimony.

Affirmed.

/s/ Brian K. Zahra
/s/ Mark J. Cavanagh
/s/ Patrick M. Meter