

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BOBBY MAURICE COCHRAN,

Defendant-Appellant.

UNPUBLISHED

December 16, 2008

No. 279970

Wayne Circuit Court

LC No. 07-003298-01

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

PER CURIAM.

Defendant appeals as of right his bench-trial conviction of assault with intent to commit criminal sexual conduct involving penetration, MCL 750.520g(1). Pursuant to MCL 769.11, he was sentenced as a third habitual offender to 2 years, 10 months to 20 years in prison. We affirm. This appeal has been decided without oral argument. MCR 7.214(E).

Defendant's argues that the prosecution failed to produce sufficient evidence to prove the essential elements of assault with intent to commit criminal sexual conduct involving penetration. We disagree. "This Court reviews de novo a challenge to the sufficiency of the evidence in a bench trial. The evidence is viewed in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Lanzo Constr Co*, 272 Mich App 470, 473-474; 726 NW2d 746 (2006) (citations omitted).

The elements of assault with intent to commit criminal sexual conduct involving penetration are (1) an assault, and (2) intent to commit criminal sexual conduct involving penetration. *People v Nickens*, 470 Mich 622, 627; 685 NW2d 657 (2004). The statute does not require "the existence of an aggravating circumstance or that the assault is made with an improper sexual purpose or intent." *Id.* An assault is either (1) an attempt to commit a battery, or (2) an unlawful act which places another in reasonable apprehension of receiving an immediate battery. *Id.* at 628.

The first element, an assault, was established through the victim's testimony. Defendant's threat to shoot the victim placed the victim in "reasonable apprehension of receiving an immediate battery." According to the victim's testimony, defendant threatened to shoot her in the back if she did not perform the requested sex act. Defendant communicated to the victim that he had a gun. Defendant stated his desire to penetrate the complainant's mouth with his penis.

Whether defendant was in possession of an actual gun, a facsimile, or no gun at all does not affect the victim's "reasonable apprehension" caused by defendant's threat that he would shoot her if she tried to run. The fact and circumstances of defendant's threat created the apprehension of an immediate battery in the victim's mind, thereby constituting an assault.

The defense contended that the prosecution did not prove beyond a reasonable doubt that defendant brandished a "real gun." The victim heard what she believed to be a gun "go click, click" as defendant verbalized his threats to shoot her. Ultimately, the victim refused defendant's request to perform the sex act and saw the barrel of a gun as she ran away. Defendant did not shoot as previously threatened. But the crime of assault with intent to commit criminal sexual conduct involving penetration does not require the perpetrator to be armed. See *id.* at 627-628.

The second element, intent to penetrate, was also established by the victim's testimony, which was sufficient to support defendant's conviction. A victim's testimony "need not be corroborated" in a prosecution for assault with intent to commit criminal sexual conduct involving penetration. MCL 750.520h; see also *People v Lemmon*, 456 Mich 625, 632 n 6; 576 NW2d 129 (1998). The victim testified that defendant told her "you [are] going to suck my [penis]." This testimony sufficiently established defendant's intent to commit sexual penetration. See MCL 750.520a(r).

The defense does not provide any evidence to support its theory that the victim lacked credibility. The defense argues that a credible victim would have taken the chance to escape or "drive the van away" when defendant exited the vehicle to urinate. The defense also highlights the improvidence of the victim's decision to accept a ride from defendant, whom she had initially refused, because it was extremely late at night and the victim was within walking distance of her home. The trial court acknowledged that the victim exercised poor judgment, but found "her story to be very plausible and very credible."

Witness credibility is to be assessed by the trier of fact. *Lemmon*, *supra* at 646. "Circumstantial evidence and reasonable inferences that arise from the evidence can constitute sufficient proof of the elements of the crime." *People v Akins*, 259 Mich App 545, 554; 675 NW2d 863 (2003). "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

Viewing the testimony in the light most favorable to the prosecution, we conclude that there was sufficient evidence from which a rational trier of fact could have concluded beyond a reasonable doubt that defendant committed assault with intent to commit criminal sexual conduct involving penetration.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Patrick M. Meter