

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM EDWARD WESTBROOK,

Defendant-Appellant.

UNPUBLISHED

October 15, 2009

No. 286463

Wayne Circuit Court

LC No. 08-005166-FC

Before: Saad, C.J., and O’Connell and Zahra, JJ.

PER CURIAM.

After a bench trial, defendant William Edward Westbrook was convicted of one count of first-degree criminal sexual conduct pursuant to MCL 750.520b(1)(a) (sexual penetration of a person under 13 years of age) and two counts of first-degree criminal sexual conduct pursuant to MCL 750.520b(1)(b) (sexual penetration of a family member at least 13 but less than 16 years of age), and was sentenced to concurrent terms of 25 to 37½ years’ imprisonment. We affirm defendant’s convictions but remand for correction of the judgment of sentence.

First, defendant argues that the evidence presented at trial was insufficient to support his conviction under MCL 750.520b(1)(a) because the evidence did not establish that the abuse occurred when the victim was under 13 years of age. We disagree.¹ We review de novo a claim that the evidence was insufficient to support a conviction in a bench trial. *People v Lanzo Constr Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). We view the evidence “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.” *Id.* at 474.

Defendant was convicted primarily on the testimony of the victim, who was 14 years old at the time of trial. Defendant argues that insufficient evidence was presented to establish the age element of the crime. Specifically, defendant argues that the victim’s testimony was the only evidence indicating the victim was 11 when the abuse started, and the lack of corroborating evidence necessitates reversal. We disagree. Pursuant to MCL 750.520h, the testimony of the

¹ Defendant does not challenge the sufficiency of the evidence supporting his convictions under MCL 750.520b(1)(b).

victim in a prosecution under MCL 750.520b(1)(a) does not need to be corroborated. Moreover, “the most direct evidence in the majority of cases will be the complainant’s testimony itself.” *People v Morey*, 461 Mich 325, 337; 603 NW2d 250 (1999).

Questions of credibility and intent are left for the trier of fact to resolve, and we will not interfere with those findings unless they are clearly erroneous. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999); MCR 2.613(C). Here, the trial court found the victim to be “a totally credible witness,” and the record supports that finding. On both direct and cross-examination, the victim stated that the first incident of sexual abuse, which involved defendant forcing her to perform fellatio on him, occurred when she was 11 years old. Defendant has failed to demonstrate that the trial court’s findings were clearly erroneous.

Next, defendant argues that the trial court made an erroneous conclusion of law and failed to state its factual findings with the specificity required by MCR 2.517(A)(1) and MCR 6.403 when it stated that the victim was “less than 15 years old.” We disagree.

In a bench trial, the court must find the facts and state separately its conclusions of law regarding contested matters. MCR 2.517(A)(1); MCR 6.403. “Factual findings are sufficient as long as it appears that the trial court was aware of the issues in the case and correctly applied the law.” *People v Legg*, 197 Mich App 131, 134; 494 NW2d 797 (1992). Defendant’s entire argument turns on the trial court’s statement that it found defendant to be under the age of 15 instead of under the age of 13 when the abuse occurred. A review of the record demonstrates that this statement reflects nothing more than a misstatement, if not a transcription error.²

Regardless of the apparent error’s origin, it is clear that no one in the courtroom was under the impression that defendant was being convicted of the non-existent offense of sexually abusing someone under the age of 15. All the testimony, and even defense counsel’s questioning, acknowledged that the defendant claimed that she was assaulted from the time she was 11 until she was 13. Defendant was charged with the appropriate crime, sufficient evidence was presented to convict him of that crime, and he was sentenced for that crime. The trial court’s error, if any occurred, had no effect on the proceedings or hindered defendant’s substantive rights.

We note, however, that the amended judgment of sentence indicates that all three of defendant’s convictions were under MCL 750.520b(1)(a) when in fact only one conviction fell under that subsection. The other two convictions were under MCL 750.520b(1)(b). Therefore, we remand for the limited purpose of correcting the judgment of sentence to reflect the proper statutory citations for the conviction offenses.

² The possibility that the transcript contains a typographical error is supported by the fact that neither the prosecutor nor defense counsel objected or asked for clarification when the court apparently misstated the age requirement of the offense.

Affirmed as to defendant's convictions but remanded for the clerical correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Henry William Saad

/s/ Peter D. O'Connell

/s/ Brian K. Zahra