

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC JAMES JOHNSON,

Defendant-Appellant.

UNPUBLISHED

January 21, 2010

No. 289289

Wayne Circuit Court

LC No. 08-011696

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of criminal sexual conduct in the third degree (CSC III), MCL 750.520d(1)(a) (sexual penetration with a minor between 13 and 16 years of age). The trial court denied defendant's motion for a new trial, and defendant was sentenced to three to 15 years in prison. Defendant appeals as of right and raises three issues. First, defendant claims the trial court erroneously denied his motion for new trial. Defendant claims, in essence, that the verdict is against the great weight of the evidence. Second, defendant maintains his conviction must be set aside because there was insufficient evidence of force or coercion. Third, defendant claims the trial court erroneously failed to strike certain information from the presentence information report and the sentencing information report. For reasons explained in this opinion, we find no merit to any of defendant's claims of error. We affirm defendant's conviction. However, we remand this matter to the trial court for correction of the judgment of sentence. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Motion for New Trial

Defendant first argues that the trial court erred in denying his motion for a new trial. He asserts that complainant's version of events was contradicted by the lack of any physical evidence, and suggests such evidence would have been present if the crime had occurred in accordance with her testimony. In essence, he argues that the verdict was against the great weight of the evidence. In *People v Horn*, 279 Mich App 31, 41 n 4; 755 NW2d 212 (2008), this Court stated:

The test to determine whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would

be a miscarriage of justice to allow the verdict to stand. *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). Conflicting testimony and questions of witness credibility are insufficient grounds for granting a new trial. *People v Lemmon*, 456 Mich 625, 643; 576 NW2d 129 (1998). Except in extraordinary circumstances, such as where testimony contradicts indisputable physical facts or physical realities, the trial court must defer to the jury's determination. *Id.* at 645-646 (citation omitted).

We review the denial of a motion for a new trial for an abuse of discretion. See *People v Miller*, 482 Mich 540, 544; 759 NW2d 850 (2008).

In this case, complainant had no bruises or other indicia of injury, even though she claimed she struggled and that defendant forcefully penetrated her. Arguably, these "physical facts" may have called into question the forcefulness of the struggle. However, they did not make the sexual intercourse implausible. Defendant mistakenly argues that the charge was based on force and coercion; the CSC III charge was based on sexual penetration of a child between the ages of 13 and 16. Evidence of the sexual penetration did not "preponderate[] so heavily against the verdict."

Defendant's argument could be construed as being that complainant's testimony was incredible given the discord between her testimony regarding force and the lack of physical evidence, thus calling into question the credibility of her assertion that there was sexual intercourse. However, as previously noted, [c]onflicting testimony and questions of witness credibility are insufficient grounds for granting a new trial." *Lemmon, supra* at 643. Moreover, the trial court's rationale for finding the testimony credible--that sexual penetration can occur without evidence of physical harm--was sensible. The lack of physical evidence does not preponderate so heavily against complainant's testimony that the verdict would constitute a miscarriage of justice. Accordingly, the trial court did not abuse its discretion in denying defendant's motion for a new trial.

II. Evidence of Force or Coercion

Defendant next argues that the evidence was insufficient to show force or coercion. However, as previously noted, defendant was convicted of CSC III based on MCL 750.520d(1)(a). All that was required for this conviction was a finding that defendant sexually penetrated complainant, who was 14 years old at the time. There was sufficient evidence of these elements. Complainant's age was not disputed. Moreover, her testimony was more than sufficient for a rational trier of fact to find beyond a reasonable doubt that sexual penetration occurred. Accordingly, the evidence was sufficient. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), *aff'd* 466 Mich 39 (2002) (applying the same sufficiency standard in a bench trial that would apply in a jury trial).

III. Sentencing Information

Finally, defendant argues that the trial court failed to strike objected-to information from the presentence investigation report and sentencing information report. Defendant was entitled to corrected reports. MCR 6.425(E)(2)(a); MCLA 771.14(6); see also *People v Black*, 482 Mich 1072 (2008). Here, the reports were in fact corrected by hand written notations made by the trial

judge. There is no authority directing that the correction or deletion be made in the form of a new report.

We note that the judgment erroneously indicates that defendant was convicted of criminal sexual conduct in the second degree. In fact, the defendant was convicted for CSC III. The information, as well as an order of conviction and sentence, indicate that defendant was charged and convicted for CSC III. Thus, we remand this case to the trial court for correction of the judgment of sentence to reflect that defendant was convicted of CSC III.

Defendant's conviction is affirmed. We remand for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Brian K. Zahra