STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 8, 2016
v	No. 325376 Grand Traverse Circuit Court
RANDALL JOSEPH PETERS, Defendant-Appellant.	LC No. 14-011918-FH

Before: SERVITTO, P.J., and GADOLA and O'BRIEN, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of assault with intent to commit criminal sexual conduct involving sexual penetration, MCL 750.520g(1). The trial court sentenced defendant to 50 to 120 months' imprisonment. We affirm.

Defendant argues on appeal that there was insufficient evidence to sustain his conviction. A challenge to the sufficiency of the evidence requires this Court to view the evidence in a light most favorable to the prosecution and determine whether any rational juror would be warranted in finding that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). We review sufficiency of the evidence issues de novo. *People v Harverson*, 291 Mich App 171, 177; 804 NW2d 757 (2010).

To convict defendant of assault with intent to commit sexual penetration, the prosecution was required to prove each of the following elements beyond a reasonable doubt: (1) an assault, and (2) an intent to commit criminal sexual conduct involving sexual penetration. *People v Nickens*, 470 Mich 622, 627; 685 NW2d 657 (2004).

The first element, assault, is either " 'an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery.' " *Id*., quoting *People v Johnson,* 407 Mich 196, 210; 284 NW2d 718 (1979). A battery is "an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person." *People v Reeves*, 458 Mich 236, 240 n 4; 580 NW2d 433 (1998). The second element requires proof that defendant intended to commit criminal sexual conduct involving sexual penetration. MCL 750.520a(r) defines "sexual

penetration" as "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required." The existence of an aggravating circumstance, such as force or coercion, or an improper sexual purpose or intent is not required to prove intent. *Nickens*, 470 Mich at 627.

The prosecution's evidence in this case sufficiently proves that defendant assaulted the victim and intended to commit criminal sexual conduct involving sexual penetration. The victim testified that defendant forcibly removed her from her tent, pushed her onto the ground, and got on top of her. He hit her with a brick two or three times while sitting on top of her. After the altercation, the victim had a wound on her hand and a scratch on her forehead, and the back of the victim's neck appeared red or discolored. This testimony, when viewed in a light most favorable to the prosecution, is sufficient to prove assault.

The second element, intent to commit sexual penetration, was also established through the victim's testimony, which was sufficient to support defendant's conviction. Both direct and circumstantial evidence can constitute sufficient proof of the elements of a crime, *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000), and because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient. *People v Fetterley*, 229 Mich App 511, 517-18; 583 NW2d 199 (1998). In prosecutions involving criminal sexual conduct, a complainant's testimony need not be corroborated. MCL 750.520h. Moreover, it is the role of the jury to determine the truth by weighing evidence and evaluating the credibility of each witness, and this Court must draw all reasonable inferences and make credibility choices in favor of the jury verdict. *Nowack*, 462 Mich at 400; *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012).

Here, the victim testified that defendant removed her from her tent and pushed her to the ground. At some point, the victim's pants were pushed down to the top of her thighs. Defendant sat straddled on top of the victim's exposed buttocks and removed her shoes and socks. Defendant then stopped what he was doing and said, "This isn't me. I can't do this. I'm not going to rape you." A reasonable jury could infer from this statement that, before defendant stopped, he intended to rape the victim. Later, when defendant discovered that the victim was menstruating, he stated, "if I had known that, we wouldn't have had any problem in the first place." This statement also supports the inference that defendant intended to commit sexual penetration because, if defendant intended only to assault the victim and not to commit sexual penetration, the fact that the victim was menstruating would have been irrelevant. The victim's testimony, as well as the other evidence admitted at trial, could cause a reasonable jury to infer that defendant intended to commit sexual penetration on the victim. The jury's determination is accorded deference on appeal. *Eisen*, 296 Mich App at 331.

The evidence in this case sufficiently established that defendant assaulted the victim and intended to commit criminal sexual conduct involving sexual penetration. Consequently, defendant's challenge to the sufficiency of the evidence is without merit.

Affirmed.

/s/ Deborah A. Servitto
/s/ Michael F. Gadola
/s/ Colleen A. O'Brien