

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
November 17, 2016

v

DAVID TERRACE BRAND,
Defendant-Appellant.

No. 328496
Washtenaw Circuit Court
LC No. 13-001530-FH

Before: BECKERING, P.J., and HOEKSTRA and OWENS, JJ.

PER CURIAM.

A jury convicted defendant of fourth-degree criminal sexual conduct (CSC-IV) (force or coercion involving the element of surprise and/or victim physically helpless), MCL 750.520e(1)(b)(v), (c). Defendant was sentenced to four months in jail and five years' probation. He appeals as of right. Because the evidence was sufficient to support his conviction, we affirm.

The victim testified at trial that defendant joined her in bed after she had gone to sleep. While her back was turned to defendant, defendant then took the victim by surprise and rubbed the victim's buttocks with his hand and penis. The defense theory at trial was that any touching by defendant was inadvertently done while defendant was sleeping. The jury convicted defendant of CSC-IV. Defendant now appeals as of right.

On appeal, defendant claims that the evidence at trial was insufficient to support his conviction. In particular, according to defendant, the defense theory—that any touching was unintentionally done while defendant slept—was “more credible” than the victim's version of events and the prosecutor's theory of the case. However, it is “well-established rule that a jury may convict on the uncorroborated evidence of a CSC victim,” *People v Lemmon*, 456 Mich 625, 642 n 22; 576 NW2d 129 (1998); MCL 750.520h, and defendant makes no argument that, if believed, the victim's description of events did not support a CSC-IV conviction. Instead, defendant's arguments rest solely on questions of credibility and the weight of the evidence,¹

¹ At points in his argument, defendant deviates entirely from a sufficiency analysis and argues that the “great weight of the evidence” shows that defendant was asleep and that any movement of his body was inadvertent. However, this issue is not properly presented for review because

issues which are properly left to the jury. See *People v Stevens*, 306 Mich App 620, 628; 858 NW2d 98 (2014). Viewing the evidence in a light most favorable to the prosecutor as we are required to do when analyzing the sufficiency of the evidence, *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000), we will not reverse the jury's verdict on appeal based on defendant's contention that his version of events was more believable.

Affirmed.

/s/ Jane M. Beckering

/s/ Joel P. Hoekstra

/s/ Donald S. Owens

defendant did not raise a challenge involving the great weight of the evidence in his statement of the questions presented. See *People v Unger*, 278 Mich App 210, 262; 749 NW2d 272 (2008); MCR 7.212(C)(5). We will not consider this issue further.