

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of KELVIN PARKER-BELL, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

KELVIN PARKER BELL,

Respondent-Appellant.

UNPUBLISHED

March 15, 2012

No. 303149

Wayne Circuit Court

Family Division

LC No. 06-453259-DL

Before: MURPHY, C.J., and HOEKSTRA and MURRAY, JJ.

PER CURIAM.

Respondent appeals as of right the trial court's order finding him responsible for the offense of third-degree criminal sexual conduct, MCL 750.520d(1)(b) (force or coercion used), entered following a bench trial. Respondent was ordered placed in a secure or non-secure facility.¹ We affirm.

Respondent argues that petitioner introduced insufficient evidence to find him responsible. When reviewing a claim of insufficient evidence, this court reviews the record de novo. *People v Parker*, 288 Mich App 500, 504; 795 NW2d 596 (2010). This Court reviews the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Ericksen*, 288 Mich App 192, 196; 793 NW2d 120 (2010).

In order to be found responsible for third-degree criminal sexual conduct, petitioner needed to prove that respondent used force or coercion to accomplish sexual penetration. *People v Carlson*, 466 Mich 130, 139; 644 NW2d 704 (2002) aff'd after remand 467 Mich 870 (2002).

¹ The order of disposition fails to specify in which facility, if any, respondent was placed. Nor does the order of disposition indicate for what period of time respondent was to be placed in such a facility.

That burden was met here. The victim testified that respondent followed the victim through a ladies' locker room and into a sauna, held her against a wall and began kissing her, as the victim told him to stop, and while she attempted to shove him away while turning her head to avoid his mouth. Respondent then told the victim to get on the floor; she complied because she was scared. He then inserted his penis into her vagina, as she told him to stop. Viewing the facts in the light most favorable to the prosecution, there can be little doubt that there was sufficient evidence presented that respondent used force or coercion to accomplish sexual penetration.

Respondent argues that there was insufficient evidence presented here to show force or coercion because respondent "'said' don't get on the bench get on the floor and she did so. [The victim] never said that he threatened her to do that or that he was yelling at her to do so." Respondent too narrowly construes the applicable statutory language. As the Michigan Supreme Court has noted, the relevant statutory language defining "force or coercion" "'includes *but is not limited to* any of the circumstances listed in . . . [MCL 750.520b(1)(f)(i) to (v)].'" *Carlson*, 466 Mich at 136 n 4, quoting MCL 750.520d(1)(b) (Emphasis in the original). MCL 750.520b(1)(f)(i)-(v) in turn, enumerates several circumstances that constitutes force or coercion, including actual physical force which overwhelms a victim, and coercion through threats of immediate violence. MCL 750.520b(1)(f)(i)-(ii). Here, respondent used physical force on the victim when he held her against a wall, kissing her while she pushed back against him and told him to stop. That he did not verbally threaten her with further physical harm during the brief period of time when he told her to get on the ground is irrelevant; he had used physical force on the victim seconds earlier, and it was reasonable for her to believe that he would continue to do so should she fail to comply. Indeed, the victim testified that the reason she got on the ground was because she felt frightened of what respondent might do to her if she did not comply. Accordingly, viewing the facts in the light most favorable to the prosecution, sufficient evidence was presented to show that respondent achieved penetration through "force or coercion."²

Respondent also points to inconsistencies in the victim's testimony, and argues that she was not credible. However, the credibility of witnesses is within the purview of the fact finder, and will not be "resolved anew" on appeal. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000), citing *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). The trial court found the victim believable, and found respondent responsible on the basis of her testimony, and this Court is not in a position to second-guess that determination.

Respondent's last argument is that the trial court failed to comply with the requirements of MCR 6.403 and MCR 2.517. MCR 6.403 provides, in language similar to its civil analog MCR 2.517, that in a bench trial "[t]he court must find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment." To that end, respondent argues that because the trial court failed to specifically note certain inconsistencies in the

² Respondent argues that this Court should reverse because only the victim testified at trial, but MCL 750.520h provides that "[t]he testimony of a victim need not be corroborated in prosecutions under sections 520b to 520g." Thus, that the victim's testimony was uncorroborated is irrelevant.

victim's testimony, "this brings reasonable doubt before the court that the court did not specifically dismiss [sic] in their [sic] opinion." Here, the trial court did make findings of fact: it recited, in detail, what occurred on the day of the incident. The court also made specific conclusions of law when it found beyond a reasonable doubt that respondent committed the crime of third-degree criminal sexual conduct. That the court here did not specifically note certain inconsistencies in testimony demonstrates only that it found the witness credible, which, again, is not an issue this Court will "resolve anew" on appeal. *Davis*, 241 Mich App 700.

However, even assuming, arguendo, that the trial court did not make specific findings of fact, this Court would still not reverse because "[a] judge's failure to find the facts does not require remand where it is manifest that he was aware of the factual issue, that he resolved it and it would not facilitate appellate review to require further explication of the path he followed in reaching the result[.]" *People v Jackson*, 390 Mich 621, 627 n 3; 212 NW2d 918 (1973). Here, the trial judge was clearly aware of the factual issues, and resolved them; accordingly, remand is not appropriate.

Affirmed.

/s/ William B. Murphy
/s/ Joel P. Hoekstra
/s/ Christopher M. Murray