

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SAM DANIEL SANDERS,

Defendant-Appellant.

UNPUBLISHED

August 16, 2012

No. 303989

Calhoun Circuit Court

LC No. 2010-002810-FH

Before: TALBOT, P.J., and WILDER and RIORDAN, JJ.

PER CURIAM.

A jury convicted defendant of harboring a runaway, MCL 722.151; fourth-degree criminal sexual conduct, MCL 750.520e(1)(a); and third-degree criminal sexual conduct, MCL 750.520d(1)(a). The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to concurrent sentences of one year in jail for harboring a runaway, 46 to 180 months' imprisonment for fourth-degree criminal sexual conduct, and 25 to 40 years' imprisonment for third-degree criminal sexual conduct. Defendant appeals as of right, challenging only his conviction for third-degree criminal sexual conduct. We affirm.

The victim, a 14-year-old girl with cognitive disabilities and speech and hearing impairments, was picked up by defendant and the two spent the night at his house. There was evidence that, during this time, the victim was menstruating.

Acting on a tip, police arrived at defendant's house the following morning and, after finding the victim there naked, arrested him. Defendant initially told police that he just met the victim because a car she and a friend of hers were using had broken down, and they sought shelter at his home, but the friend was able to get another ride and left. But later, defendant changed his story and said that the victim was a runaway because her family did not treat her well. He then also admitted that he had met her through her granddaughter, who goes to school with the victim, and talked with the victim before on the phone. During the police interview, the detective noticed that defendant had, what appeared to be, dried blood on his hands, with the heaviest concentration on defendant's right-hand index and middle finger. When asked about it, defendant initially told the detective that it was ketchup and started to rub his hands together, as if trying to rub the residue away. To preserve the potential evidence, the detective had defendant's hands swabbed. Defendant then claimed that it was his own blood from an injury he

suffered from working on a car. However, lab results later established that the residue on defendant's hand was the victim's blood.

The victim told police and a sexual-assault nurse that defendant's finger went inside her. But at trial, the victim equivocated somewhat and testified initially that she did not know whether there was penetration, and then testified that defendant touched and rubbed her vagina with his hand. After establishing with the victim that the word "coochie" was synonymous with the word "vagina," the prosecution then elicited the following testimony:

Q. Okay. Do you remember [the prosecutor at the preliminary examination] holding her hand up like this?

* * *

Q. Okay. I'm going to do that again for you, okay. . . . [I]f this is your cootchie what did his finger do? Show me, just like you showed at the preliminary exam, go ahead.

A. Like that.

Q. Okay. So you put it here, your finger right here?

A. (No audible response.)

Q. So is that inside a little bit?

A. (No audible response.)

Q. Is that a yes?

A. Mh-hm.

Q. Okay. Thank you . . . I know this is embarrassing. How did that feel when he did that?

A. It didn't feel right.

Then on cross-examination, the victim testified that, at some point, she felt defendant's fingernail inside her but was not sure which finger penetrated her or how deep the penetration was.

Defendant argues that the prosecution failed to introduce sufficient evidence from which a rational trier of fact could conclude beyond a reasonable doubt that defendant's finger penetrated the victim, an essential element of third-degree criminal sexual conduct. MCL 750.520d. We disagree.

This Court reviews sufficiency of the evidence appeals de novo and "reviews the evidence in the light most favorable to the prosecution." *People v Harverson*, 291 Mich App 171, 175; 804 NW2d 757 (2010). The prosecution must introduce sufficient evidence for a

rational trier of fact to find that the essential elements of the crime were proven beyond a reasonable doubt, which can be done with circumstantial evidence and the reasonable inferences arising therefrom. *Id.*; *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). “All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime.” *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005) (internal citations omitted).

Penetration is an essential element of a third-degree criminal sexual conduct charge. MCL 750.520d(1)(a). Penetration is “sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body” MCL 750.520a(r). “According to the law, penetration is *any* intrusion, however slight, into the vagina *or* the labia majora.” *People v Lockett*, 295 Mich App 165, 188; 814 NW2d 295 (2012) (emphasis in original, quotation marks omitted).

In this case, the victim testified that during the assault, defendant’s finger went inside her and she felt his fingernail. Regardless of the fact that some of her other testimony seemed to contradict the evidence that penetration occurred, on appeal, conflicts in the testimony are resolved in favor of the prosecution. *Wilkens*, 267 Mich App at 738. Therefore, the victim’s account of the assault, when viewed in a light most favorable to the prosecution, provided sufficient direct evidence to allow a jury to conclude beyond a reasonable doubt that penetration occurred.

Additionally, circumstantial evidence supported the victim’s testimony as well. Specifically, defendant had the victim’s blood on his hands, with the strongest concentration of the blood on his middle and index fingers. Since the victim was menstruating at the time, the blood on defendant’s hands allows for a jury to reasonably infer that penetration occurred.

Lastly, “[a] jury may infer consciousness of guilt from evidence of lying or deception.” *People v Unger*, 278 Mich App 210, 227; 749 NW2d 272 (2008). Here, there was evidence that defendant lied to the police in many aspects. Evidence was introduced that defendant lied to the police regarding how the victim ended up at his house. And defendant lied about the red substance on his hands and fingers, first claiming it was ketchup and then his own blood, when lab tests revealed that it was the victim’s blood.

We hold, therefore, that when viewing all of the evidence in a light most favorable to the prosecution, a rational trier of fact could have found that defendant’s finger intruded, however slightly, into the victim’s vagina or labia majora.

Affirmed.

/s/ Michael J. Talbot
/s/ Kurtis T. Wilder
/s/ Michael J. Riordan