

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
September 25, 2012

v

KENNETH NORMAN LONG,

Defendant-Appellant.

No. 305053
Oakland Circuit Court
LC No. 2010-233106-FC

Before: MURPHY, C.J., and MARKEY and WHITBECK, JJ.

PER CURIAM.

Defendant was convicted of first-degree criminal sexual conduct, second offense, MCL 750.520b(a)(1) (victim under 13); MCL 750.520b(2)(c), following a bench trial. The trial court sentenced defendant as an habitual offender, fourth offense, MCL 769.12, to life in prison. Defendant appeals as of right. We affirm.

Defendant was visiting one of his daughters and her children. He was left alone with his grandchildren, and when his daughter returned, she found defendant and the victim in a bedroom. The victim's pants were pulled down and defendant's face was between the victim's legs. The victim's mother called the police, and police arrested defendant.

At trial, the victim testified that defendant licked inside and outside her "front" and "back" private parts and stated that "poo" comes out of her "back" private part and "pee" comes out of her front private part. Three of defendant's four daughters also testified that defendant performed cunnilingus on them at a young age.

Defendant first argues that the prosecution introduced insufficient evidence from which a rational trier of fact could conclude beyond a reasonable doubt that defendant penetrated the victim. We disagree.

Whether evidence is sufficient to sustain a criminal conviction presents a question of law this Court. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). The prosecution must introduce sufficient evidence for a rational trier of fact to find the essential elements of the crime were proven beyond a reasonable doubt. *Id.* The same standard applies to both bench and jury trials. *People v Petrella*, 424 Mich 221, 269-270; 380 NW2d 11 (1986). "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

“Sexual penetration’ means 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.” MCL 750.520a(o). In this case, the victim answered a compound question in a manner that defendant argues made her testimony insufficient to establish penetration. The victim was asked, “And when he licked your private part, did it go on the outside or inside or something different.” She answered, “Both.” However, immediately thereafter the prosecutor asked two questions that clarified that defendant licked the victim “in” the place where she goes “potty” and “wipe[s] with toilet paper.” Furthermore, the act of cunnilingus by definition involves sexual penetration. *People v Legg*, 197 Mich App 131, 132-133; 494 NW2d 797 (1992). Therefore, sufficient evidence supported defendant’s conviction. *Id.*

Defendant next argues that his conviction was against the great weight of the evidence. A conviction should only be set aside as being against the great weight of the evidence when “the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result.” *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). This Court reviews the findings of fact in a bench trial for clear error. *People v Lanzo Const Co*, 272 Mich App 470, 473; 726 NW2d 746 (2006). “A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made.” *Id.* Questions of law are reviewed de novo. *Id.*

Defendant argues that his conviction was against the great weight of the evidence because the victim’s testimony did not establish penetration and because defendant testified he did not put his tongue in her vagina or touch her for sexual gratification.

As noted already, the victim’s testimony was sufficient to establish penetration. Defendant’s own testimony that he is innocent does not render the verdict against the great weight of the evidence. The trial court credited the competent testimony of the young victim and the corroborating testimony of her mother. This Court gives deference to the trial court’s credibility determinations, given its opportunity to hear live testimony, MCR 2.613(C), unless the testimony is “patently incredible” or it “defies physical realities.” *Lemmon*, 456 Mich at 643. In this case, the victim’s testimony was corroborated by the victim’s mother, who witnessed defendant with his head between the victim’s legs and his face wet from nose to chin. There is no basis for this Court to interfere with trial court’s credibility determination to find that the verdict is against the great weight of the evidence.

We affirm.

/s/ William B. Murphy
/s/ Jane E. Markey
/s/ William C. Whitbeck