

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 20, 2012

v

BRUNO JOSEPH PERINO,

Defendant-Appellant.

No. 307707
Delta Circuit Court
LC No. 11-008456-FH

Before: TALBOT, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Defendant Bruno Joseph Perino appeals as of right from his conviction by a jury of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a) (sexual contact with a person under 13 years old). The trial court sentenced him to nine months in the county jail and five years' probation. We affirm.

I. BASIC FACTS

At the time of the subject offense, defendant was a bus driver for the Hannahville School District. SB and her brother PB were on defendant's bus route. Their mother was a special-education aide at the same school they attended, so SB and PB typically rode to school with their mother Monday through Thursday and took the bus on Fridays and other days their mother did not work at the school. When SB and PB rode the bus, they were the first two children on the route and were alone with defendant for about five minutes before other children boarded.

On a Friday toward the end of February 2011, SB's mother noticed that SB gave defendant a hug when she got on the bus. The following Monday, SB's mother noticed SB hugging defendant again. At this point, SB's mother determined that the hugging was inappropriate and decided to talk to SB about it. After talking to SB, SB's mother became concerned, so she contacted her other daughter, who was also employed at the children's school, and asked how she should proceed. After talking to her other daughter, SB's mother took SB to school for an interview with a social worker. Defendant was suspended following SB's interview, pending the results of the investigation.

Police officers interviewed defendant on three separate occasions. On all three occasions, defendant came in voluntarily and without the assistance of counsel. At the first interview, defendant specifically denied ever making skin-on-skin contact with SB below the waist. At the second interview, however, defendant admitted that he reached underneath SB's skirt and into her leggings and underwear and touched her buttocks, although he contended that it was to secure her from falling while the bus was moving. When asked why he did not just grab the back of SB's skirt when holding her around the waist, defendant explained that he did not want to rip the skirt if she fell forward. During the third interview with Michigan State Police Detective Sergeant Eric Bannan, defendant signed and dated his answers to written questions, wherein he answered "yes" when asked, "Did you hug [SB]," "Is it possible you kissed her," "Did you stick your hand down [SB's] pants," and "When your hand went down [SB's] pants, did it touch her butt?" Defendant also told Bannan that he "grabbed a hold of her so that she wouldn't fall."

Before SB testified at trial, SB's mother had her review the answers SB had given at the preliminary examination. During the trial, SB described defendant as having "touched me somewhere he isn't supposed to." SB stated that she hugged defendant every morning when she got on the bus and kissed him on the cheek at his direction. Moreover, defendant frequently called her up to the front of the bus and, when there, defendant would put his hand on her "butt." SB also testified that on six or seven occasions, defendant's hand would go inside her clothes, including inside her underwear for periods of 10 to 11 seconds. "The first time [defendant] touched [SB] down there," defendant told her to keep it a secret.

By comparison, defendant testified that he grabbed SB to prevent her from falling and that his only intention "was to keep her safe." Any contact under SB's clothing was accidental according to defendant. After SB hugged him the first few times, defendant stated he went to his supervisor and was told not to put his arms around SB when she hugged him. Defendant also testified that he told SB that she should not kiss him anymore. Defendant insisted that it was SB who decided to come to the front of the bus on her own initiative; SB frequently left her seat to come up and ask him questions and, before she returned to her seat, she would hug him. Despite defendant's testimony, the jury found him guilty of CSC II.

II. SUFFICIENCY OF THE EVIDENCE

On appeal, defendant claims that there was insufficient evidence to establish beyond a reasonable doubt that he committed CSC II. Defendant makes two principal arguments: (1) SB's testimony was not credible because her mother coached her before trial to testify a certain way and (2) the prosecution failed to prove that he touched SB for a sexual purpose.

We review de novo challenges to the sufficiency of the evidence. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). The evidence must be considered "in the light most favorable to the prosecution." *People v Haverson*, 291 Mich App 171, 175; 804 NW2d 757 (2010). Additionally, this Court "must determine whether a rational trier of fact could find that the evidence proved the essential elements of the crime beyond a reasonable doubt." *Id.*

A defendant commits CSC II in violation of MCL 750.520c(1)(a) when he or she engages in sexual contact with another person and that other person is under 13 years of age. “‘Sexual contact’ includes the intentional touching of the victim's or defendant’s intimate parts or . . . the clothing covering the immediate area of the . . . intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification [or] done for a sexual purpose” MCL 750.520a(q). “‘Intimate parts’ includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.” MCL 750.520a(e).

Defendant first argues that SB was not credible as a witness. “‘It is the function of the jury alone to listen to . . . witnesses . . . and . . . decide the weight and credibility to be given to their testimony.’” *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), quoting *People v Palmer*, 392 Mich 370, 375-376; 220 NW2d 393 (1974). Moreover, “it is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences.” *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). “[A]ny conflict in evidence must be resolved in the prosecutor’s favor,” *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009), and the prosecution “need not negate every reasonable theory consistent with innocence.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Here, the jury heard testimony that SB’s mother went over the preliminary-examination transcript with her. Additionally, during its deliberation, the jury asked to hear SB’s testimony replayed. After listening to the testimony of both SB and defendant, the jury accorded more weight and credibility to SB’s testimony. We will not interfere with the jury’s role of deciding witness credibility. *Hardiman*, 466 Mich at 431.

Defendant also argues that the prosecution failed to establish that he touched SB for a sexual purpose. However, “[c]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999), quoting *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993). Moreover, “because it can be difficult to prove a defendant’s state of mind on issues such as . . . intent, minimal circumstantial evidence will suffice” *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008). Again, “any conflict in evidence must be resolved in the prosecutor’s favor.” *Harrison*, 283 Mich App at 378.

Here, there were two competing versions of events presented at trial: the prosecution’s version that defendant touched SB for a sexual purpose and defendant’s version that he only touched SB to keep her from falling. Defendant admitted in interviews with police officers that he had, in fact, touched SB on her “butt” and under her clothes. Defendant also changed his story after the first interview with police officers, initially denying any skin-on-skin contact underneath SB’s clothing and later admitting to it, which implicates his credibility. Furthermore, SB testified that defendant told her to “keep it a secret” the first time he touched her inside her clothing. Therefore, there was “minimal circumstantial evidence,” *Kanaan*, 278 Mich App at 622, sufficient to establish defendant’s sexual purpose. As with defendant’s first argument, it is the job of the jury to draw reasonable inferences and weigh the evidence accordingly. *Hardiman*, 466 Mich at 428. This Court will not disturb the fundamental function of a jury. “[I]t is simply not the task of an appellate court to adopt inferences that the jury has spurned.”

Id. at 461. Taking all of the evidence in the light most favorable to the prosecutor, we conclude that there was sufficient evidence to support defendant's conviction.

Affirmed.

/s/ Michael J. Talbot
/s/ Jane M. Beckering
/s/ Michael J. Kelly