

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SEDRICK D. GATES,

Defendant-Appellant.

UNPUBLISHED
October 29, 1999

No. 205540
Recorder's Court
LC No. 96-006390

Before: Jansen, P.J., and Saad and Gage, JJ.

PER CURIAM.

Following a bench trial, the trial court convicted defendant of assault with intent to commit criminal sexual conduct involving penetration, MCL 750.520g(1); MSA 28.788(7)(1). The court sentenced defendant to eighteen months to ten years in prison. Defendant appeals as of right, and we affirm.

Defendant argues that the trial court erred in its findings of fact. Findings of fact are reviewed for clear error. MCR 2.613(C); *People v Everard*, 225 Mich App 455, 458; 571 NW2d 536 (1997). This Court gives deference to findings of fact by the trial court, and will not reverse unless those findings are clearly erroneous. *Id.* A finding is clearly erroneous if, after a review of the record, this Court is left with a definite and firm conviction that a mistake has been made. *Id.*

Defendant maintains that the court incorrectly believed that the complainant failed to testify to the time of the incident, and that this mistake caused the court to disregard defendant's alibi defense. In fact, the record reveals that the complainant testified that the assault occurred around 11:00 a.m. This testimony was crucial to defendant's alibi, because of the question concerning defendant's whereabouts at 11:00 a.m. Initially, defendant testified that he was at home at 11:00 a.m., then he corrected himself to say that he was at Farmer Jack, and that his wife dropped him off at their home between 11:15 and 11:20 a.m.. Defendant's wife testified that she dropped defendant off at 11:30 a.m. Defendant claims that the court chose not to resolve this discrepancy because the court erroneously believed that the complainant had not stated a time of the incident, and therefore, the court failed to give proper weight and consideration to his alibi.

During closing argument, the court and counsel seemed confused regarding the alleged time of the assault and whether the complainant stated a time. Accordingly, the court questioned the prosecution about the complainant's testimony, and remarked that its recollection was that the complainant had not stated a time. The prosecution believed that the complainant had testified to early morning, and that the time of 11:00 a.m. may have been suggested by defense counsel during cross-examination. In fact, the record reveals that the complainant had volunteered 11:00 a.m. as the time of the occurrence.

Nonetheless, when the court set forth its findings of fact in compliance with MCR 2.517(A)(1), it apparently did not believe that the complainant had failed to state a time. Nor does it appear that such an alleged finding led the court to disregard defendant's alibi. Rather, the court relied upon the complainant's testimony. The credibility of witnesses is a question for the trier of fact. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). The court felt it unnecessary to resolve the factual disputes in defendant's alibi because it found that the complainant was credible and that her testimony was corroborated. The court believed that the complainant testified without inconsistency or exaggeration. With respect to the alibi defense, the court found that defendant's alibi testimony was not credible. Furthermore, the court found that defendant had ample opportunity to commit the crime regardless of the temporal discrepancies in defendant's alibi.

Affirmed.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Hilda R. Gage