

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WAYNE EDWIN ORR,

Defendant-Appellant.

UNPUBLISHED

February 1, 2002

No. 226724

Arenac Circuit Court

LC No. 99-002648-FH

Before: Sawyer, P.J., and O'Connell and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree criminal sexual conduct, MCL 750.520c(1)(b)(ii) (sexual contact with a relative at least thirteen years old but less than sixteen). The trial court sentenced him to thirty-six months' probation, with the first year to be spent in jail. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The complainant in this case was defendant's thirteen-year-old grandson. He testified that he stayed at his grandparents' mobile home for three weeks in the summer of 1997. According to the complainant, he and defendant twice took showers together to save water while other family members were there and they engaged in mutual masturbation with the bathroom door closed. On three other occasions, they engaged in mutual masturbation in the back bedroom. Several months later, while he was living at the Saint Vincent home in Saginaw, he reported the incidents to his counselor who in turn contacted the police. The complainant admitted that had stolen some items in the past and "lied to my mom, lied to a lot of people," but he stated that his testimony was truthful.

The defense theory was that the complainant fabricated the incidents and the defense witnesses portrayed him as a troubled child and a liar. Neither defendant's daughter nor son-in-law recalled defendant and the youth being gone together for brief periods or the two being together in the bathroom or back bedroom. According to the son-in-law, the trailer's open windows and doors would have allowed anyone to hear any unusual activity from outside and he said that the interior of the trailer was not soundproof. Another daughter characterized the complainant as a chronic liar. The complainant's cousin stated that it was not possible for defendant and his grandson to be alone together in the bathroom or back bedroom because everyone was always watching the youth to ensure that he was not in trouble. The complainant's mother described her son as having a poor reputation for truthfulness and honesty, and she

echoed the testimony that he and defendant could not have been alone in the bedroom or bathroom. Similarly, defendant's wife and the complainant's grandmother testified that anything the youth said was untrue. She further stated that defendant's medication made him impotent.

Defendant contends that the evidence was insufficient to support his conviction. We disagree. Sufficiency of the evidence issues are reviewed de novo. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000). When reviewing a challenge to the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution to determine if a rational trier of fact could find the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Although defendant argues that the evidence was insufficient because the complainant lacked credibility, this Court must not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *Id.* at 514-515. Viewing the evidence in a light most favorable to the prosecution, there was testimony that defendant and his grandson engaged in mutual masturbation when the complainant was thirteen years old. That evidence was sufficient to support defendant's conviction of second-degree CSC.

Defendant also argues that the verdict was against the great weight of the evidence, contending that the trial court should have granted his motion for new trial because of the numerous witnesses' testimony that it was not possible that the incidents occurred and because the complainant's testimony was thoroughly impeached. This Court reviews for an abuse of discretion a trial court's determination that a verdict was not against the great weight of the evidence. *People v Stiller*, 242 Mich App 38, 49; 617 NW2d 697 (2000). The test is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow it to stand. *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001).

Defendant's argument again amounts to a claim that the jury should have believed his witnesses rather than the complainant because the latter's testimony was not credible. However, absent exceptional circumstances, issues of witness credibility are for the jury, and the trial court may not substitute its view of the witnesses' credibility for that of the jury. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). When the "testimony is in direct conflict and testimony supporting the verdict has been impeached, if 'it cannot be said as a matter of law that the testimony thus impeached was deprived of all probative value or that the jury could not believe it,' the credibility of witnesses is for the jury" to resolve. *Id.* at 643, quoting *Anderson v Conterio*, 303 Mich 75, 79; 5 NW2d 572 (1942). In this case, the complainant's testimony was not patently incredible or so inherently implausible that a reasonable juror could not believe it. *Id.* at 643, 644. Accordingly, the trial court did not abuse its discretion.

Affirmed.

/s/ David H. Sawyer
/s/ Peter D. O'Connell
/s/ Brian K. Zahra