

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON WESTLEY WOLBERS,

Defendant-Appellant.

UNPUBLISHED

August 24, 2004

No. 246975

Ottawa Circuit Court

LC No. 01-25240-FH

Before: Whitbeck, C.J., and Owens and Schuette, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of first-degree criminal sexual conduct, (CSC I), MCL 750.520b(1)(g), for which he was sentenced to two to fifteen years' imprisonment. Defendant appeals as of right. We affirm.

I. FACTS

Complainant testified that on June 6, 2001, she and a friend went to defendant's residence where they played drinking games and smoked marijuana. According to defendant and other witnesses at trial, complainant participated in a game of strip poker and was voluntarily naked at some point during the game. Complainant testified that around 1:00 a.m., she began to feel very weak and tired. She fell asleep with clothes on in a sleeping bag on the couch. Defendant was sitting on the opposite end of the couch watching a movie. Complainant testified that when she awoke, she saw defendant's shadow over her. She testified that her bra was undone and he was touching her breasts. She told him to stop and then fell back asleep. Complainant testified that the next time she awoke she could not see anyone, but experienced pain in her vaginal area which felt like bending fingers. She then fell back asleep. The last time she awoke, the complainant testified that she was very weak and that her vaginal area was sore and wet. She was on the floor with her pants and underwear pulled down and her shirt lifted up. She asked defendant why her clothes were off, to which he replied, "Well, why did you take them off?" Complainant testified that she went into the bathroom with her friend and asked her to touch her vaginal area because she was scared and did not know why that area was wet. Complainant was taken for testing at the YWCA, where the examining nurse found redness to her labia minora and the posterior fourchette and several lacerations to the base of the vagina and the anus. The medical experts introduced at trial could not conclusively say that these injuries were evidence of penetration, but also stated that these injuries were not inconsistent with penetration or an

attempt thereof. Defendant's seminal fluid was found during testing on complainant's underwear and on an anal swab.

II. SUFFICIENCY OF THE EVIDENCE

Defendant argues that there was insufficient evidence that he sexually penetrated the complainant. We disagree.

A. Standard of Review

This Court reviews a "challenge to the sufficiency of the evidence in a bench trial de novo and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt." *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39; 642 NW2d 339 (2002). Special deference is given to the trial court's credibility determinations. *Id.* at 267.

B. Analysis

Defendant challenges the sufficiency of the evidence on the ground that the only evidence supporting the allegation of penetration was complainant's testimony that she felt pain in her vaginal area, although she could not see defendant but only what appeared to be his shadow, and that when she awoke her vaginal area was wet. Defendant also noted that the examining nurse and doctor could not say with any certainty that there was penetration into the vaginal or anal openings, only that there was redness to the labia minora and lacerations between the vagina and anus. However, the "[t]estimony of a complainant that the defendant engaged in sexual penetration is sufficient evidence from which a jury could infer that penetration took place." *People v Reinhardt*, 167 Mich App 584, 598; 423 NW2d 275 (1988), vacated on other grounds by 436 Mich 866; 460 NW2d 226 (1990). And, in a prosecution for CSC I, evidence of penetration of the labia majora is sufficient to support a finding of sexual penetration. *People v Bristol*, 115 Mich App 236, 238; 320 NW2d 229 (1981). Thus, the complainant's testimony indicating that defendant penetrated her genital area together with the physical evidence indicative of penetration was sufficient to support defendant's conviction.

Although defendant claims all sexual contact between the complainant and him was consensual, the trial court found that defendant sexually penetrated and injured the complainant while she was helpless and unable to defend herself. Deferring to the trial court's findings of credibility and viewing the evidence in a light most favorable to the prosecution, *Sherman-Huffman*, *supra* at 265-267, we hold that there was sufficient evidence to support defendant's CSC I conviction.

Affirmed.

/s/ William C. Whitbeck
/s/ Donald S. Owens
/s/ Bill Schuette