STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 17, 2006
v	No. 258396 Wayne Circuit Court
KEVIN LAMONT HARDING, Defendant-Appellant.	LC No. 04-005029-01

Before: Donofrio, P.J., and Borrello and Davis, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of three counts of second-degree criminal sexual conduct (CSC), MCL 750.520c(1)(a) (sexual contact with a person under the age of thirteen). Defendant was sentenced to concurrent terms of 5 to 15 years' imprisonment for each of his convictions. We affirm.

Defendant first argues that there was insufficient evidence to support his convictions for second-degree CSC. We disagree. We review a challenge to the sufficiency of the evidence de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). We view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find the essential elements of the crime proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999).

A person is guilty of second-degree criminal sexual conduct "if the person engages in sexual contact with another person" who is "under 13 years of age." MCL 750.520c(1)(a); *People v Piper*, 223 Mich App 642, 645; 567 NW2d 483 (1997). MCL 750.520a(n) defines "sexual contact" as "the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner. . . ." "'Intimate parts' include the primary genital area, groin, inner thigh, buttock, or breast of a human being." MCL 750.520a(c). Here, the prosecution was required to prove that defendant touched the victim's intimate parts, that the touching was for a sexual purpose or could reasonably be construed as having been done for a sexual purpose, and that the victim was less than 13 years old at the time. See also CJI2d 20.2; CJI2d 20.3. It is undisputed that the victim was nine years old at the time.

The victim testified that defendant intentionally touched her vagina and buttocks with his hand or penis. On three separate occasions, the victim was alone with defendant, and the victim was instructed by defendant to take off her pants. The victim testified that during the first incident of sexual contact, defendant touched her vagina with his hand and moved his hand back and forth in a rubbing motion. During the second incident of sexual contact, defendant placed his penis on top of the victim's vagina and moved it around. While doing so, defendant faced the victim and placed his hands on the victim's buttocks and squeezed. On the third occasion, defendant digitally penetrated the victim's vagina. Defendant warned the victim to keep the encounters secret. A rational tier of fact could reasonably conclude that these incidents of touching the victim's intimate parts were for the purpose of sexual arousal or gratification, were done for a sexual purpose, or were done in a sexual manner. MCL 750.520a(n). Accordingly, the prosecution presented sufficient evidence for a rational trier of fact to conclude that all of the elements of second-degree CSC were proven beyond a reasonable doubt.

Defendant argues that the victim's testimony alone is insufficient, and he further argues that her testimony was illogical and inconsistent with his own version of events. Under MCL 750.520h, the testimony of a victim does not need to be corroborated in a prosecution under sections "[750.]520b to [750.]520g." See also, *People v Lemmon*, 456 Mich 625, 632 n 6; 576 NW2d 129 (1998); CJI2d 20.25. Moreover, a positive identification by a witness may be sufficient evidence to support a conviction of a crime. *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Questions of credibility are left to the fact-finder, and this Court will not resolve them anew on appeal. *People v Avant,* 235 Mich App 499, 506; 597 NW2d 864 (1999). The jury chose to credit the victim's testimony regarding the three separate incidents of sexual contact instead of defendant's version of events. The victim positively identified defendant as the person who sexually assaulted her. Further corroboration of the victim's testimony is unnecessary to prove defendant guilty beyond a reasonable doubt of second-degree CSC.

Defendant next argues that his total OV score should be reduced from 45 points, level IV, to 35 points, level IV, because the trial court erred in finding that the victim suffered a serious psychological injury requiring professional treatment. We disagree. We review for clear error. *People v Hicks,* 259 Mich App 518, 522; 675 NW2d 599 (2003).

Offense Variable Four (OV 4) is scored for a psychological injury to the victim; MCL 777.34(1)(a) instructs the trial court to score ten points if "[s]erious psychological injury requiring professional treatment occurred to a victim." Further, MCL 777.34(2) instructs the trial court to "[s]core 10 points if the serious psychological injury may require professional treatment." *People v Apgar*, 264 Mich App 321, 329; 690 NW2d 312 (2004). The victim had already received psychological treatment following the three incidents of sexual contact, and further treatment was planned. Additionally, the victim testified at trial she was "afraid" following the sexual contact with defendant. At sentencing, evidence was presented that the victim was "scared." This Court has held that a victim testifying that they were "fearful" following an incident of sexual contact was sufficient evidence to support the trial court's score of ten points for OV 4. *Apgar, supra* at 329. Here, the evidence offered at trial and sentencing adequately supports the trial court scoring OV 4 at ten points. Moreover, under MCL 777.64, defendant's minimum sentence range would remain at 36 to 71 months even if OV 4 was not scored at ten points by the trial court. Accordingly, remand for resentencing is unnecessary. *People v Houston*, 261 Mich App 463, 473; 683 NW2d 192 (2004).

We need not address defendant's argument that his guideline scoring was improper under *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 403 (2004). However, we briefly note that a majority of our Supreme Court has found that "the Michigan System is unaffected by the holding in *Blakely*." *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004) (Justices Cavanagh, Weaver, and Young concurred with Justices Taylor and Markman writing for the Court). This Court has established that *Claypool* is binding precedent. *People v Wilson*, 265 Mich App 386, 399; 695 NW2d 351 (2005); *People v Drohan*, 264 Mich App 77, 89 n 4; 689 NW2d 750 (2004). Defendant's argument is without merit.

Affirmed.

/s/ Pat M. Donofrio
/s/ Stephen L. Borrello
/s/ Alton T. Davis