

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FAREJ MOHAMED ALHAYADIR,

Defendant-Appellant.

UNPUBLISHED

January 29, 2008

No. 275369

Wayne Circuit Court

LC No. 06-006914-01

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of first-degree criminal sexual conduct (CSC1), MCL 750.520b(1)(f), and domestic violence, MCL 750.81(2). Because sufficient evidence existed to support defendant's conviction of first-degree criminal sexual conduct, we affirm. This case is being decided without oral argument pursuant to MCR 2.714(E).

Defendant argues that there was insufficient evidence to convict him of first-degree criminal sexual assault. He argues specifically that the witnesses were unreliable and that there was a lack of physical evidence to prove sexual assault beyond a reasonable doubt. This Court reviews challenges to the sufficiency of the evidence de novo. *People v Osantowski*, 274 Mich App 593, 613-614; 736 NW2d 289 (2007). In reviewing the sufficiency of the evidence in a criminal case, this Court must review the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could have found the essential elements of the crime were proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001).

Defendant's convictions arise out of an incident that began on May 27, 2006, when defendant's estranged wife spoke with the Dearborn Police, reporting that defendant hit her because she would not let him take the children. After speaking with the police, defendant's wife went to her parents' home in Detroit when, around 2:00 a.m., she called the Detroit Police and told them she was experiencing heavy bleeding. The police responded by sending an ambulance that took her to Oakwood Hospital in Dearborn. At the hospital, defendant's wife spoke with a doctor and nurse and claimed her injuries were the result of being raped by defendant. During the police investigation, defendant's wife admitted that defendant and defendant's brother "dragged me up the stairs and he threw me on the couch. And his brother

had his hand on my mouth and around, his other hand on my hands holding them up, and that my husband raped me,” and stated defendant’s penis penetrated her vagina.

The doctor performed a vaginal examination and found “minimal blood in the actual vaginal vault but there was no signs of any trauma to be seen.” The blood was maroon colored, meaning the bleeding “could have been a few hours prior.” The doctor concluded that it was possible that defendant’s wife had been sexually penetrated because of the multiple injuries to her face, abdomen, and neck. The doctor noted a lack of vaginal tearing, which is explainable if defendant’s wife did not thrash or was held down while being assaulted.

Defendant’s wife’s sister was at the wife’s home in Dearborn and witnessed defendant and his brother push their way into the home. Defendant’s wife’s sister heard a scream and investigated. She saw defendant “on top of [defendant’s wife] with his pants down to his knees.” She tried to stop them, but was pushed down. Once defendant and his brother fled, she tended to her sister, who had fainted. Eventually, the wife’s sister went to a neighbor’s home to call the police.

At trial, defendant’s wife recanted her earlier testimony and claimed that statements made during her preliminary examination, including statements describing defendant pushing the door open, defendant dragging her upstairs by her hair, and her fainting after being raped, were all untrue. She testified she made the story up because, at the time, she was angry with defendant for “choosing his parent’s [sic] side over me.” She also claims that she chose to accuse defendant of criminal sexual conduct because her sister suggested it. Additionally, even though she told police of their marital problems, she recanted and claimed she and defendant were not having marital difficulties.

An actor may be found guilty of first-degree criminal sexual conduct if the actor causes personal injury to the victim, engages in sexual penetration of the victim, and uses force or coercion to accomplish the sexual penetration. MCL 750.520b(1)(f); *People v Nickens*, 470 Mich 622, 629; 685 NW2d 657 (2004). In this case, there were personal injuries to defendant’s wife in the form of abrasions and cuts to her left ankle and foot, a hematoma to the right occipital area, ligamentous injuries, and blood in her vaginal vault. As testified to by the doctor, the vaginal bleeding experienced by defendant’s wife is consistent with forced sexual penetration. The sum of her injuries appear to be consistent with the use of force by defendant to accomplish sexual penetration. And, defendant’s wife stated, while being treated at the hospital, to being sexually assaulted by defendant. Finally, defendant admitted to sexual intercourse with his wife on May 27, 2006, the date in question. Thus, reviewing the facts in the light most favorable to the prosecution, there is sufficient evidence to support defendant’s first-degree criminal sexual conduct conviction.

Next, we address defendant’s claim that defendant’s wife and her sister were unreliable witnesses. The credibility of witnesses is a decision for the trier of fact, and this Court should not interfere in that determination. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992). In this case, the trial court believed the statements defendant’s wife made while being treated at Oakwood Hospital were truthful because she made the rape claims when her sister was not present. The trial court believed that defendant’s wife recanted her preliminary examination testimony because of pressure placed on her by both families. The trial court explained her trial testimony as the product of being “only seventeen years of age, unemployed, the bane of two

families. There's now two children with one purportedly on the way without a visible mean of support for taking care of those children. Plus, the fact that she may still, even though she has gone through this horrific experience, may still even emotionally care for the defendant."

Furthermore, an uncorroborated prior inconsistent statement can provide the sole support for a conviction. *People v Chavies*, 234 Mich App 274, 288; 593 NW2d 655 (1999), overruled on other grounds 475 Mich 245 (2006). In relying on the prior inconsistent testimony, the question is, if in viewing the prior testimony in the light most favorable to the prosecution, was the evidence so unreliable that no reasonable trier of fact would accept it as sufficient to support a defendant's conviction beyond a reasonable doubt. *Id.* at 285. Here, the trial court indicated that the wife's previous statements had a strong indicia of reliability because "everybody seemed to have been on the same page of the hymnal when [defendant's wife] went to Oakwood Hospital." Finding the wife's previous statements reliable, the trial court could, in its determination of the credibility, use those statements to convict defendant.

Regarding the testimony of the sister, the trial court found her credible because defendant's wife was too "embarrassed, overwhelmed by the fact that she had been physically, sexually assaulted" to call the police. We decline to interfere with the trial court's determination regarding this question of credibility. *Wolfe, supra* at 514. Thus, based on the credibility of the witnesses and physical evidence, we conclude that the prosecution proved first-degree criminal sexual conduct beyond a reasonable doubt.

Affirmed.

/s/ Richard A. Bandstra

/s/ Pat M. Donofrio

/s/ Deborah A. Servitto