

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RYAN CHRISTOPHER PEARSON,

Defendant-Appellant.

UNPUBLISHED

October 21, 2008

No. 278900

Allegan Circuit Court

LC No. 06-014973-FC

Before: Markey, P.J., and Sawyer and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his March 28, 2007, jury trial conviction for second-degree criminal sexual conduct (CSC) (person under thirteen), MCL 750.520c(1)(a), for which he was sentenced to nine months in jail and five years on probation. We affirm.

Defendant first argues that there was insufficient evidence to support his conviction of second-degree CSC. We view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential 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). A person is guilty of second-degree CSC if he engages in sexual contact with another person who is under 13 years old. MCL 750.520c(1)(a). Sexual contact is intentional touching for sexual arousal or gratification or, when viewed objectively, can reasonably be construed as being for sexual purposes. MCL 750.520a(n). Defendant asserts that there was no evidence the touching of the victim's breasts was intentional or for sexual purposes.

The victim testified that defendant reached his hand up her shirt and rubbed her breasts for approximately five minutes. This testimony provides evidence that the touching was not merely accidental but intentional. Defendant did not merely bump the victim's breasts or touch them once, he rubbed them for several minutes. Further, defendant reached his hand up the victim's shirt in order to touch her breasts. When viewed objectively, the touching described by the victim can reasonably be construed as being intentional and for sexual purposes. *People v Lemons*, 454 Mich 234, 253; 562 NW2d 447 (1997); *People v Duenaz*, 148 Mich App 60, 63-64; 384 NW2d 79 (1985).

In reaching our conclusion, we reject the argument that the victim's testimony is insufficient. The testimony of a sexual assault victim need not be corroborated. MCL 750.520h.

And, the credibility of a witness is an issue for the jury. *Wolfe, supra* at 514-515. Therefore, the victim's testimony was sufficient to satisfy the elements of the offense. Accordingly, we find that, when viewed in the light most favorable to the prosecution, there was sufficient evidence to support the conviction of second-degree CSC.

Next, defendant argues that he was denied a fair trial when the prosecutor improperly vouched for the victim's credibility. Because defendant failed to object at trial, we review for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

A prosecutor may not vouch for the credibility of a prosecution witness by suggesting that he has some special knowledge concerning a witness' truthfulness. *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). However, a prosecutor may respond to defense counsel's comments. *People v Hart*, 161 Mich App 630, 638; 411 NW2d 803 (1987). He may also comment on a witness' credibility, especially when the resolution of the case depends on whose testimony the jury believes. *People v Thomas*, 260 Mich App 450, 455; 678 NW2d 631 (2004). A prosecutor may also argue that his witness has no reason to lie. *Id.*

Here, defendant's theory of the case was that the victim fabricated her story. In his closing argument, the prosecutor urged the jury to find the victim's testimony credible. The prosecutor did not suggest he had special knowledge about the victim's truthfulness. Rather, he was merely commenting on his own witness' credibility in response to defendant's theory of the case and arguing from the facts of the case that the victim had no reason to lie and should be believed.

Affirmed.

/s/ Jane E. Markey
/s/ David H. Sawyer
/s/ Kirsten Frank Kelly