

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JACOB RAY SIKANAS,

Defendant-Appellant.

UNPUBLISHED
February 22, 2018

No. 336313
Kent Circuit Court
LC No. 16-002893-FH

Before: MARKEY, P.J., and M. J. KELLY and CAMERON, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial conviction for assault with intent to commit criminal sexual conduct involving penetration, MCL 750.520g(1). The trial court sentenced defendant to three years' probation and 330 days in jail with credit for 252 days. We affirm.

This case arises from a sexual assault that took place during the early morning hours of June 21, 2015, in Grand Rapids, Michigan. The victim testified that on June 20, 2015, defendant came to her apartment to "hang out" around 4:00 p.m. or 5:00 p.m., and then the two went out together for the evening. On this particular day, defendant was already drunk when he showed up at the victim's apartment. Sometime between 6:00 p.m. and 7:00 p.m., the pair left the victim's apartment to go barhopping. After visiting several bars over a period of hours, defendant's behavior became increasingly erratic, and they were kicked out of one or two of the bars. They then returned to the victim's apartment. The victim testified that "[defendant] was being like extremely flirtatious, physical, so we were kissing and we made out a little bit." The victim consented to this behavior. The two then got ready to go to bed. In bed, the victim and defendant continued to kiss; however, when defendant removed the victim's pants, the victim told him that she did not want to have sex with him. Defendant wanted to continue doing more, so he tried to insert his penis into the victim's vagina. The victim testified that defendant's efforts to engage in sex hurt her. The victim stated, "[h]onestly, I don't think that he was hard enough to actually do that. I think that that's why it hurt so much because he was just trying to like push something inside me that wasn't naturally going to go inside me." At this point, defendant was on top of the victim, and when the victim resisted his advances, defendant slapped her across the face. Defendant then pointed his finger at the victim and resumed attempting to penetrate her. The victim told defendant not to slap her, but defendant then slapped her harder for a second time across the face.

The victim testified that she used her legs to push defendant off her. Defendant then grabbed the victim by her hair bun, pulled her from the bed, and dragged her across the room for “a little while.” While defendant was dragging the victim, she tried to scratch his arms to get away. At some point, the victim testified that “I was huddled on the ground and he was just kind of like perched over me, he was spitting on me and . . . [h]e was like threatening me. He said that he would like destroy me and come after me and my family and my best friend.” The victim repeatedly asked defendant to leave, but defendant remained and demanded that she call him an Uber. Defendant also started throwing a fit in the victim’s apartment. The victim stated that “[h]e had ripped like my phone charger out of the socket. My lamp ended up being broken in the altercation. Some of my stuff got thrown out the window.”

The victim was then able to call the police, but she ended up hanging up on them. When the 911 dispatcher called back, the victim told them “just never mind, that nothing was wrong.” The victim testified that she hung up on the dispatcher because “I kept thinking that he was going to leave, that it was going to be over, that he was going to leave.” But when she attempted to stand up to stop him from breaking things, defendant grabbed her by the throat, threw her onto the bed, pushed his fingers underneath her jaw line, called her “worthless,” and told her she was “just a fat bitch from Minnesota.” Defendant also forced the victim say out loud that she was “worthless.” The victim screamed for her roommate, but no one responded.

The victim was finally able to escape defendant and ran out of her apartment to her friend’s and neighbor’s apartment with defendant following her. As the victim was banging on her neighbor’s door, defendant entered a nearby elevator and left after stating, “I see you.” The victim’s neighbor did not answer, so she went to his neighbor’s door asking him for her neighbor’s number. The victim then returned to her apartment to assess the damage defendant had done. It was at this time that the victim realized her right arm was starting to swell, and she thought something was very wrong with it. She called her friend who advised her to go to the hospital. The victim returned to her neighbor’s door and banged on it until he woke up.

The victim’s neighbor testified that he had known the victim for a while and that they were neighbors in the same apartment building. During the early morning of June 21, 2015, the neighbor was awoken by pounding at his door. He answered his door and found the victim crying and stating that her arm was hurt. The victim’s neighbor drove her to the hospital where she was seen by a physician’s assistant in the emergency room. The physician’s assistant did not notice anything out of the ordinary except for a quarter-size bruise on the victim’s right forearm. The victim did not report any vaginal pain or other injury except for the forearm pain. The victim was diagnosed with a contusion of the right forearm and released from the hospital around 5:00 a.m. on June 21, 2015.

On February 3, 2016, the victim went to the Grand Rapids Police Department to get a restraining order and file a police report. On February 4, 2016, the victim met with a Grand Rapids Police Department detective and made a written statement.

On March 3, 2016, the detective interviewed defendant. The detective testified that defendant “acknowledged that he and [the victim] were friends, and that they had been out together for basically the entire day.” Defendant further stated that

[h]e said that they started drinking at approximately noon together, that they had drank all day long, had gone to several bars together, and ended up back at her apartment. He stated that they - - that he wanted to have sex but that she wasn't interested in having sex, and that he had taken her sister's picture that he was in the apartment and had jokingly said that he was going to go in the bathroom and masturbate basically to her sister's picture and that that's what kind of started this argument.

During the argument, defendant stated that the victim grabbed him and scratched his arms; therefore, defendant became angry and threw the picture of the victim's sister out the window. As the argument continued, defendant stated he threw more pictures out the window, and then ended up walking home. The detective testified that defendant told him that the victim was not interested in having sex with him.

Defendant's argument that there was insufficient evidence that defendant assaulted the victim with intent to commit criminal sexual conduct is without merit.

"This Court reviews de novo claims of insufficient evidence, viewing the evidence in the light most favorable to the prosecution, to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt." *People v Bennett*, 290 Mich App 465, 471-472; 802 NW2d 627 (2010). Additionally, questions of statutory interpretation are also subject to de novo review. *People v Phillips*, 469 Mich 390, 394; 666 NW2d 657 (2003).

In this case, defendant argues that the victim's testimony only proves that an assault occurred after the sexual activity; therefore, the assault was not committed with the intent to commit criminal sexual conduct (CSC). This argument is incorrect. To prove a violation of MCL 750.520g(1), there must be an assault and intent to commit CSC involving sexual penetration. See *People v Nickens*, 470 Mich 622, 627; 685 NW2d 657 (2004). First, "when one attempts an intentional, unconsented, and harmful or offensive touching of a person, one has committed an assault." *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005). In this case, the evidence supported that an intentional, unconsented, and harmful or offensive touching occurred twice, i.e., when defendant slapped the victim across her face during his attempted penetration. The victim testified that she told defendant not to slap her, but defendant then slapped her even harder a second time. The victim did not consent to being slapped; therefore, the first element of MCL 750.520g(1) is satisfied because the intentional, unconsented, and offensive touching by defendant could cause a reasonable jury to conclude beyond a reasonable doubt that defendant committed a battery. See *Nickens*, 470 Mich at 628 (noting that a battery is an intentional, unconsented, and harmful or offensive touching of a person or something closely connected to the person). "Because a battery includes an attempted-battery assault," the evidence also showed that the victim was assaulted by defendant. *Id.* at 630.

The element of intent to commit CSC may be proved with circumstantial evidence and reasonable inferences that arise from that evidence. *People v Williams*, 294 Mich App 461, 471; 811 NW2d 88 (2011). An actor's intent may be express or it may be inferred from the surrounding facts and circumstances. *People v Fetterley*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998). It is not necessary to show that the sexual act was started or completed,

People v Lasky, 157 Mich App 265, 270; 403 NW2d 117 (1987), and the testimony of a victim does not need to be corroborated to support a conviction of criminal sexual conduct, MCL 750.520(h). In this case, the victim testified that she did not want to have sex with defendant, and defendant told the detective that the victim was not interested in having sex with him. Still, while in bed with the victim, defendant repeatedly attempted to insert his penis into the victim's vagina. The victim testified that defendant's efforts to engage in sex hurt her. Defendant was on top of the victim, and when she resisted his advances, defendant slapped her across the face. Defendant then pointed his finger at the victim and resumed his attempts to penetrate her. The victim told defendant not to slap her, but defendant then slapped her harder a second time across the face. Finally, the victim testified that she used her legs to push defendant off her. Considering all of the evidence together, we find it was sufficient to prove that defendant had the requisite intent to commit sexual penetration.

Moreover, regardless of the assaults that transpired after defendant attempted to penetrate the victim, we conclude that the two slaps across the victim's face while defendant was trying to commit sexual penetration sufficiently support defendant's conviction because a rational jury could find both elements of the charged offense were proved beyond a reasonable doubt. *Nickens*, 470 Mich at 627-628; *Bennett*, 290 Mich App at 471-472.

We affirm.

/s/ Jane E. Markey
/s/ Michael J. Kelly
/s/ Thomas C. Cameron