

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ELISEO CHEYO GUERRERO, JR.,

Defendant-Appellant.

UNPUBLISHED

November 19, 2020

No. 350601

Lenawee Circuit Court

LC No. 18-019222-FH

Before: O'BRIEN, P.J., and BECKERING and CAMERON, JJ.

PER CURIAM.

A jury convicted defendant, Eliseo Cheyo Guerrero, Jr., of second-degree criminal sexual conduct (CSC II) MCL 750.520c(1)(b)(iii), accosting a child for immoral purposes, MCL 750.145a, and using a computer to commit a crime (UCCC), MCL 752.796. The trial court sentenced him, as a second-offense habitual offender, MCL 769.10, to 60 to 270 months' imprisonment for the CSC II conviction, 21 to 72 months' imprisonment for the accosting a child for immoral purposes conviction, and 24 to 126 months' imprisonment for the UCCC conviction. Defendant appeals as of right his conviction for CSC II. We affirm.

I. BACKGROUND

This case arose after defendant took the hand of the complainant, who was 15 years old at the time, and placed it on the inner part of his upper thigh, over his clothes, during the July 2018 Faster Horses Music Festival (the Festival) at the Michigan International Speedway (MIS) in Brooklyn, Michigan. At the time of the incident, the complainant was volunteering with her classmates at the MIS during the Festival to raise money for her school, something she and her family had done in the past.¹ Before the incident, defendant, who was the assistant parking

¹ Rex Pomranka, a teacher at the complainant's school, testified that he had taken groups of student volunteers and chaperones to the MIS at least twice a year for about 15 years. The volunteers helped with parking at race events and at the Festival, which had begun to be held at the MIS just a few years prior to the incident at issue.

supervisor at MIS, contacted the complainant over Facebook suggesting that she could spend the day with him on his golf cart instead of directing traffic with the other students from her school. Defendant testified that he reached out to the complainant after learning that her sister was involved in a motorcycle accident that had left her paralyzed from the waist down. Defendant testified that the only reason he reached out to the complainant was because Rex Pomranka, a teacher at the complainant's high school who organized student-volunteer events, requested that he do so as Pomranka felt that the complainant could benefit from attending the Festival. The complainant's father testified that he let the complainant attend the Festival after she told him that she would be riding around on a golf cart with defendant instead of directing parking traffic.

On the day of the incident, the complainant went to direct parking traffic with the other student volunteers when defendant informed her that she could instead accompany him on his golf cart. Defendant persistently directed the conversation towards topics of a sexual nature throughout the day. The complainant testified that defendant commented on her sister's sexual life, commented on her body, discussed his own sexual encounters, inquired into her sexual encounters, inquired into the undergarments she was wearing, and stated that she could engage in sexual activities with him whenever she was ready. Later in the day, defendant took the complainant's hand and placed it on his inner thigh over his pants, near his erect penis, and stated that "it turned him on" when she touched him there.

II. ANALYSIS

Defendant argues that his conviction for CSC II should be reversed because the prosecution did not present evidence sufficient to establish that defendant (1) was in a position of authority over the complainant and (2) used his alleged authority over the complainant to coerce her to submit. We disagree.

We review a challenge to the sufficiency of the evidence by reviewing the evidence de novo in the light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime were proved beyond a reasonable doubt. See *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001). "The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Further, we will not interfere with the factfinder's role in deciding the weight and credibility to give to a witness's testimony. See *People v Lemmon*, 456 Mich 625, 646-647; 576 NW2d 129 (1998) (stating that when the question is one of credibility posed by diametrically opposed versions of the events in question, courts must leave the test of credibility with the trier of fact).

A. POSITION OF AUTHORITY

A conviction for CSC II under MCL 750.520c(1)(b)(iii) requires the prosecution to prove beyond a reasonable doubt that the (1) defendant engaged in sexual contact with another person, (2) that the other person was at least 13 but less than 16 years of age, and (3) the defendant was in a position of authority over the victim and defendant used this authority to coerce the victim to submit to the sexual contact. Defendant does not challenge that the prosecution presented evidence sufficient to establish the first two elements; it is the third element that is at issue in this appeal.

This Court looks at the evidence to determine whether the defendant held a position of authority over the victim. See, e.g., *People v Reid*, 233 Mich App 457, 467-468; 592 NW2d 767 (1999) (reviewing record evidence to determine whether the defendant was in a position of authority). A position of authority can be found if there is a relationship with characteristic “dominant” and “subordinate” roles. See, e.g., *People v Knapp*, 244 Mich App 361, 372; 624 NW2d 227 (2001) (recognizing that “the characteristic dominant and subordinate roles in any teacher-student relationship places the student in a position of special vulnerability.”) A number of factors may be considered in determining whether the defendant was in a position of authority. These include the age of the victim relative to the defendant, whether the defendant fostered a relationship of trust with the victim’s guardian, whether the defendant was entrusted with the care of the victim, whether the victim was in a position of special vulnerability, and whether the victim was subject to the general control and supervision of the defendant. See *Knapp*, 244 Mich App at 371-372, see also *Reid*, 233 Mich App at 468.

In the case at bar, the prosecution presented sufficient evidence to allow a jury to conclude beyond a reasonable doubt that defendant was in a position of authority over the complainant by virtue of defendant and complainant’s characteristic dominant and subordinate roles, the relationship of trust that defendant cultivated with the complainant’s guardians, the complainant’s age relative to defendant’s, and the complainant’s position of special vulnerability given her sister’s accident.

Testimonial evidence indicated that defendant occupied the role of supervisor and the complainant occupied a role analogous to that of subordinate employee as she was a parking lot volunteer. Defendant testified that he was an assistant parking supervisor at MIS for 14 years and his duties included passing orders onto volunteers, overseeing volunteers, and ensuring volunteers were doing their assigned tasks. Pomranka testified that defendant had been in charge of parking lot volunteers for 14 years. The complainant’s classmates testified that defendant was in charge of the parking lot and was in charge of all the volunteers, including their teacher-chaperone. The complainant further testified that defendant was the supervisor and adult in charge. This evidence is sufficient to establish defendant occupied the dominant position of supervisor while the complainant occupied the subordinate position of student-volunteer.

Defendant also cultivated a relationship of trust with the complainant’s guardians that allowed him to assume control and supervision over the complainant. Pomranka’s testimony indicated that he and defendant had a long and mutually beneficial relationship. Defendant testified that he had known Pomranka for years and had visited him at home and attended football games with him. The record reflects that, after Pomranka told defendant that the complainant’s family would not volunteer at the 2018 Festival but that the complainant might, defendant urged Pomranka to encourage the complainant to come to the Festival and told Pomranka that she could spend the day with him instead of directing traffic with the other volunteers. Pomranka understood defendant’s offer as one to help the complainant get her mind off the recent tragedy and to give her a break from spending her days at the hospital with her sister. Further, the complainant’s father, who knew of defendant through his family’s volunteering at MIS to help the school raise funds, gave permission for his daughter to attend the Festival after being informed that she would spend the day with defendant on his golf cart.

The complainant's age relative to defendant's also contributed to defendant's position of authority. The complainant was 15 years old at the time of the incident, while defendant was in his mid-forties with a daughter of about the same age as the complainant. Defendant asserts in his reply brief that the complainant viewed herself as subordinate to him because he was an adult, not because he was the assistant parking supervisor at MIS. That the complainant might have viewed defendant as an authority figure because he was an adult does not negate the jury's finding that he was in a position of authority for purposes of CSC II. In fact, this age difference is one of the factors to consider when determining whether a defendant is in a position of authority. See *Knapp*, 244 Mich App at 372. Ample record evidence establishes that defendant was in a position of authority based on considerations in addition to the vast age differential, as the complainant's contact with defendant arose only because of his role as the supervisor of the parking lot and the parking lot volunteers at MIS and her role as a volunteer, and this relationship provided the background for all of the complainant's interactions with defendant.

Lastly, the evidence established that the complainant was in a position of special vulnerability. Defendant was well aware that the complainant's sister was involved in a life-changing motorcycle accident. Defendant discussed the difficult time the complainant and her family were having with the complainant's teacher, and defendant sent a Facebook message to the complainant shortly after the accident offering emotional support. Defendant continued to acquire the complainant's trust under the guise of being supportive, and then began having communications of a sexual and inappropriate nature.

In sum, the prosecution presented evidence that defendant supervised the complainant and her school group, including the chaperones, while they volunteered at the Festival, that defendant enjoyed a relationship of trust between himself and the complainant's guardians and was a middle-aged man with a daughter the complainant's age, and that defendant was fully aware that the complainant was especially vulnerable to expressions of care and concern, given her sister's recent accident. Viewed in the light most favorable to the prosecution, *Hawkins*, 245 Mich App at 457, this evidence was sufficient to allow the jury to find beyond a reasonable doubt that defendant was in a position of authority vis-à-vis the complainant.

B. COERCION

Defendant next argues that even if he was in a position of authority, the evidence was insufficient to establish he used his position of authority to coerce the complainant to submit to sexual contact. Again, we disagree.

This Court has held that a defendant coerces the victim if "the defendant abuses his position of authority to constrain a vulnerable victim by subjugation to submit to sexual contact." *Knapp*, 244 Mich App at 369. Coercion is not necessarily a display of physical violence but can be demonstrated by evidence of the exploitation of the victim's special vulnerability, and must be determined in light of all the circumstances. *Id.* at 370; Reid, 233 Mich App at 472. Put another way, "coercion may be actual, direct, or positive, as where physical force is used to compel [an] act against one's will, or implied, legal or constructive, as where one party is constrained by subjugation to [make the] other to do what his free will would refuse." *Knapp*, 244 Mich App at 370 (citation and quotation marks omitted). Further, coercion involving an authority figure can

include “subtle persuasion” or “undue influence and psychological manipulation.” See, e.g., *id.* at 374 (citation and quotation marks omitted).

In the case at bar, the prosecution presented sufficient evidence to allow the jury to conclude that defendant’s conduct during the incident constituted direct coercion. Evidence was sufficient to allow the jury to conclude that defendant abused his position of authority to get the complainant alone in the golf cart with him for the purpose of pressuring her to have sexual contact with him. That this was defendant’s purpose is evinced by his pre-incident messages to the complainant that she was a “smoking hottie,” that he was about to “cross a line,” and that she “must have those little boys crying,” as well as by the complainant’s testimony about defendant’s comments while she was alone on the golf cart with him.

Because of his position, defendant had use of a golf cart and could determine who would ride in it with him. Having use of a golf cart and being responsible for deploying parking volunteers, defendant, and defendant alone, could offer the complainant the opportunity of riding in the cart with him if she attended the Festival, rather than having to work in the parking lot. Defendant made this opportunity appealing by framing it as therapeutic because it would take her mind off the circumstances at home without subjecting her to the pressure and exertion of having to park cars. The jury might reasonably have viewed defendant’s reaching out to the complainant over the course of several days, and his expressions of concern for her, and his offer of a privileged opportunity² as subtle persuasion to accept his offer. In light of defendant’s status as a trusted contact, his position as supervisor of the parking volunteers, and his repeated contacts with the complainant, Pomranka and the complainant’s father urged her to accept the offer and attend the Festival to take her mind off her sister’s condition. This evidence was sufficient to allow the jury to reasonably conclude that defendant abused the privileges of his position, his presumed trustworthiness, and the persuasiveness of his assertion that he wanted to help the complainant during a time of special vulnerability, to orchestrate the complainant’s spending the day alone in the golf cart with him, where he could press her to have sexual contact with him.

The complainant testified that while she was alone with defendant on the golf cart, in an area where there was little foot traffic at the time, defendant grabbed her hand with his hand and placed it on the upper part of his inner thigh toward his private parts. She testified that she pulled her hand away and tried thereafter to keep her hands folded in her lap or around her phone, and “just kept trying to do something else to keep [her] hands busy.” This testimony indicates that defendant used the element of surprise and his own strength to compel an act that was against the complainant’s will. *Knapp*, 244 Mich App at 370 (quotation marks and citation omitted). Defendant denied taking and placing the complainant’s hand on his inner thigh and denied having any sexual interest in her, and asserted that he would never sexually molest a child because, having been molested as a child, he knew the traumatic effect it could have. However, the verdict indicates that the jury found the complainant’s testimony more credible than that of defendant. As already

² Pomranka testified that, when defendant stopped by to check on them, student volunteers might sit in the cart to rest for a moment or, if it had a canopy, to get out of the shade, but he had never seen anyone ride with defendant all day.

indicated, we leave to the jury the assessment of witnesses' credibility. See *Lemon*, 456 Mich at 646-647.

Viewing the foregoing evidence in the light most favorable to the prosecution, *Hawkins*, 245 Mich App at 457, and "mak[ing] credibility choices in support of the jury verdict," *Nowack*, 462 Mich at 400, we conclude that the evidence was sufficient to allow a rational factfinder to conclude that the elements of CSC II were proved beyond a reasonable doubt, that defendant abused his position of authority as an assistant parking supervisor to get the complainant alone on the golf cart with him, and ultimately physically forcing her into submitting to sexual contact.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Jane M. Beckering
/s/ Thomas C. Cameron