

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSHUA GLENN MORIN,

Defendant-Appellant.

UNPUBLISHED

January 14, 2021

No. 351301

Bay Circuit Court

LC No. 19-010058-FH

Before: LETICA, P.J., and GLEICHER and O’BRIEN, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial conviction of fourth-degree criminal sexual conduct (CSC-IV), MCL 750.520e(1)(b)(v) (force or coercion). Defendant was sentenced to two years’ probation with 365 days in jail. We affirm.

I. BACKGROUND

This case arises from an incident that occurred while defendant and the victim were working at a restaurant. The 17-year-old victim testified that, as she “was moving to drop fries,” the 37-year-old defendant grabbed her buttocks as he passed behind her. The victim asked a coworker to request the other manager to come to the office. The victim then went to the office, locked the door, and stayed there until the police arrived.

Another employee testified that she witnessed defendant’s conduct. The restaurant’s surveillance system also partially captured the interaction and was played during trial. The same coworker testified that about an hour after touching the victim’s buttocks, defendant made a joke that involved “a sexual moaning sound” while he was cleaning.

That evening, the victim and her coworker described to police what had happened. The victim also described an earlier incident where defendant touched her breast and immediately apologized, explaining his touching was unintentional, occurring as he was attempting to retrieve a pen from the victim’s pocket. The victim was dubious regarding defendant’s explanation as defendant did not require a pen to perform his job. The videotape of that incident was also played for the jury.

When questioned by the police, defendant admitted accidentally touching the victim's breast, but denied touching her buttocks. Defendant explained that he was attempting to take the victim's pen to hide it from her as a prank.¹ Defendant may have bumped into the victim, as he has with other workers, because of the limited work space. Defendant always apologizes when he bumps into a coworker. Defendant also stated: "I turned around and there she was." When the officer asked defendant about a remark that defendant had made about "just the tip," defendant explained that he had requested to have "just the tip" of a stick of gum placed into his mouth so that he did not have to change his gloves.

At trial, defendant moved for a directed verdict, which the trial court denied. The jury convicted defendant of CSC-IV related to touching the victim's buttocks, but it acquitted him of CSC-IV related to touching the victim's breast. The trial court also denied defendant's post-trial motion for a directed verdict of acquittal.

II. DISCUSSION

Defendant argues that the trial court violated his right to due process when it denied his motion for a directed verdict of acquittal because the prosecution failed to present sufficient evidence for a rational jury to find beyond a reasonable doubt that defendant grabbed the victim's buttocks. We disagree.

We review de novo a trial court's decision to deny a directed verdict of acquittal and decide whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt when the evidence is viewed in the light most favorable to the prosecution. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006) (quotation marks and citation omitted); *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). When the prosecution fails to provide sufficient evidence, due process requires the court to direct a verdict of not guilty. *People v Chapo*, 283 Mich App 360, 364; 770 NW2d 68 (2009). "The prosecution need not negate every theory consistent with innocence, but is obligated to prove its own theory beyond a reasonable doubt, in the face of whatever contradictory evidence the defendant may provide." *Id.* at 363-364. "It is the province of the jury to determine questions of fact and assess the credibility of witnesses[.]" *People v Odom*, 276 Mich App 407, 419; 740 NW2d 557 (2007) (quotation marks and citation omitted).

Defendant was convicted of CSC-IV under MCL 750.520e(1)(b)(v), which provides:

(1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exist:

* * *

¹ This was the first time that the victim and defendant had worked the same shift.

(b) Force or coercion is used to accomplish the sexual contact. Force or coercion includes, but is not limited to, any of the following circumstances:

* * *

(v) When the actor achieves the sexual contact through concealment or by the element of surprise.

“Sexual contact” is “the intentional touching of the victim’s . . . intimate parts or the intentional touching of the clothing covering the immediate area of the victim’s . . . intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, [or] done for a sexual purpose[.]” MCL 750.520a(q). Intimate parts include a person’s buttocks. MCL 750.520a(f).

Defendant argues that the video evidence presented at trial proved that he did not grab the victim’s buttocks. The jury had the opportunity to view the video, and, even if it does not show defendant grabbing the victim’s buttocks, it supports a finding that defendant *could have* committed the crime as described by the victim and her coworker at trial because his hands, while not in view of the camera, were in a position where he could have grabbed the victim’s buttocks. Moreover, the victim and her coworker both testified that defendant grabbed the victim’s buttocks as he passed by her. This evidence, considered separate from, or together with, the video evidence, could have persuaded a rational jury to conclude that defendant, through concealment or the element of surprise, intentionally touched the clothing covering the victim’s buttocks. See *People v DeLeon*, 317 Mich App 714; 895 NW2d 577 (2016) (determining that, if believed by the jury, the victim’s testimony alone provides sufficient evidence to support a conviction for a sex crime); see also MCL 750.520h (the testimony of a sexual-assault victim need not be corroborated). Additionally, defendant’s “just the tip” remark and later sexual noise could support the conclusion that defendant touched the victim’s buttocks for a sexual purpose or that his touching could have been reasonably construed as being for the purpose of sexual arousal or gratification.

Defendant further argues that a rational jury could not have found the prosecution’s witnesses credible. But “it is not permissible for a trial court to determine the credibility of witnesses in deciding a motion for a directed verdict of acquittal, no matter how inconsistent or vague that testimony might be.” *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997). Instead, issues of credibility are questions of fact that must be resolved by the jury. *Odom*, 276 Mich App at 419. Because the prosecution presented sufficient evidence for a rational jury to find defendant guilty beyond a reasonable doubt, we conclude that the trial court did not err by denying defendant’s motion for a directed verdict of acquittal, and, resultantly, defendant’s right to due process was not violated.

Affirmed.

/s/ Anica Letica
/s/ Elizabeth L. Gleicher
/s/ Colleen A. O’Brien