STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUANCHILO JAKE SILVAS,

Defendant-Appellant.

UNPUBLISHED
November 23, 2021

No. 351829
Wayne Circuit Court
LC No. 19-004900-01-FH

Before: BORRELLO, P.J., and JANSEN and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(2)(b) (sexual contact with a victim less than 13 years of age by a defendant over 17 years of age). Defendant was sentenced to probation for 36 months, with the first year to be served in jail.[1] For the reasons set forth in this opinion, we affirm.

I. BACKGROUND

The victim, an 11-year-old girl, attended a birthday party for her cousin at her aunt's home. The victim spent the night at her aunt's home after the party, as did defendant, her uncle. During the night, while the victim slept, defendant laid his leg over the victim, rubbed her back under her shirt, and touched her buttocks over her underwear. The victim quietly got out of the bed, went into the bathroom and cried, then woke up her sister who comforted her. The next day, she told her mother and reported the conduct to the police. Defendant was convicted of CSC-II after a one-day bench trial and sentenced as stated above. This appeal followed.

II. ANALYSIS

On appeal, defendant initially challenges his conviction of CSC-II, arguing there was insufficient evidence presented at trial. The basis of this argument rests on defendant's assertion

[1] Due to COVID-19, the trial court lowered defendant's jail sentence.

that there was insufficient evidence to support his conviction because the prosecutor failed to prove defendant's actions were intentional. Defendant argues the prosecutor was required to show the act of touching the victim was voluntary and did not occur while defendant was asleep or otherwise unconscious.

Challenges to the sufficiency of evidence are reviewed de novo. *People v Solloway*, 316 Mich App 174, 180; 891 NW2d 255 (2016). This Court reviews a defendant's challenge of insufficient evidence by viewing "the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Williams*, 294 Mich App 461, 471; 811 NW2d 88 (2011), quoting *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006).

"The standard of review for a bench trial is whether there is sufficient evidence to justify a rational trier of fact to find guilt beyond a reasonable doubt" on each element of the charged offense. *People v Legg*, 197 Mich App 131, 132; 494 NW2d 797 (1992). Defendant was convicted of CSC-II under MCL 750.250c(2)(b), which required the prosecutor to show that defendant "engage[d] in sexual contact" with the victim who was "under 13 years of age" when defendant was "17 years of age or older." *People v DeLeon*, 317 Mich App 714, 720; 895 NW2d 577 (2016); MCL 750.520c(1)(a) and (2)(b). "Sexual contact" is defined, in relevant part, as

> the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor'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' includes the primary genital area, groin, inner thigh, buttock, or breast of a human being." MCL 750.520a(f). The ages of the victim and defendant are not at issue.

The prosecutor introduced evidence, through the victim's testimony, that defendant rubbed the victim's buttocks over her underwear while she was sleeping. She testified that it caused her to become upset and wake up her sister to let her know what had occurred. Multiple witnesses testified that the victim told them about the touching. However, defendant argues the prosecutor was also required to prove that defendant's actions were voluntary. In other words, defendant does not dispute the touching occurred, but argues there was insufficient evidence presented to show the contact was intentional because defendant could have been asleep during the act.

A defendant may defend against a criminal act by showing the act was committed involuntarily. *People v Likine*, 492 Mich 367, 393; 823 NW2d 50 (2012). "Examples of involuntary acts that, if proved, provide a defense against the *actus reus* elements of a crime include . . . bodily movements occurring while the actor is unconscious or asleep." *Id*. at 394-395. Thus, if defendant was asleep at the time of the act, he should not have been found guilty of CSC-II. However, "[a] prosecutor need not present direct evidence of a defendant's guilt." *Williams*, 294 Mich App at 471 (quotation marks and citation omitted). "Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime." *People v Oros*, 502 Mich 229, 239; 917 NW2d 559 (2018) (quotation marks and citation omitted). Further, a defendant's intent may be inferred from the facts and circumstances

surrounding his acts. *People v Cameron*, 291 Mich App 599, 615; 806 NW2d 371 (2011). "Because of the inherent difficulty of proving a defendant's state of mind, only minimal circumstantial evidence from which intent may be inferred need be presented." *Id*.

In his motion for a new trial, defendant brought similar arguments to the trial court. After reviewing defendant's motion, the trial court held:

> I do recall this trial. I recall the testimony. And I have to say, nowhere in my deliberations, did I think he was asleep, from my reflection on the testimony, at the time, and even now. I do recall believing that he was heavily intoxicated. And the comments that you refer to, that I made, regarding, this being, whether he meant to do it or not. I bel—once again, I –that wasn't because I thought he was asleep, but because I thought he was heavily intoxicated. And we all know that intoxication is not a defense. And so, that's why I made those comments. And so, while you know, I understand, in retrospect, reviewing the, reviewing the transcripts, one, as yourself, could come to an understanding that, maybe he was sleeping. I don't, I simply don't—the testimony that I heard here in court, the way that it played out, that just was not something that I believed, at the time. That is not something that, I believe now. But rather, I believe that his actions were alcohol induced. And that is how I viewed the evidence. And so, I don't see, any reason, to grant your directed verdict of acquittal, and or I don't believe that the evidence presented at the trial, was against the great weight—or the verdict at the trial was against the great weight of the evidence. And so, I am gonna deny your motion, on that as well.

Here, the trial court judge made reasonable inferences regarding the voluntariness of defendant's actions. The victim testified that defendant was moving his hand down her back and over her buttocks while she slept. In its findings of fact, the court indicated that the victim made a "back-and-forth" motion with her hand to demonstrate how defendant's hand moved over her body. The judge was reasonable in inferring that this "back-and-forth" motion—a motion that is typically voluntary—was done voluntarily and intentionally by defendant.

As to defendant's argument that the trial court was not presented with evidence that defendant was awake during his conduct, direct evidence was not needed because reasonable inferences could be made from his actions. At trial, defendant did not argue that he was asleep, but evidence was presented that he stated he did not know, or was not aware of, what happened the night before. After considering this evidence, the trial court impliedly made a reasonable conclusion that this motion was voluntary, finding that defendant's intoxication was the reason he might not remember his actions. Considering the evidence presented at trial, it was proper for the trial judge to infer defendant was drunk, not asleep. And, as the trial court properly noted, intoxication is not a defense to a general intent crime such as CSC-II. *People v Henry*, 239 Mich App 140, 144; 607 NW2d 767 (1999).

Likewise, the trial court was able to infer that the touching was sexual in nature. "Criminal sexual conduct is a general intent crime." *People v Piper*, 223 Mich App 642, 646; 567 NW2d 483 (1997). The prosecution does not have to show that defendant was aware he was touching the buttocks of the victim, an 11-year-old girl; it must only show there was an intentional touching that could be reasonably construed to be for a sexual purpose. *Id*. When determining whether the

sexual contact can be "reasonably construed as being for a sexual purpose, the conduct should be 'viewed objectively' under a 'reasonable person' standard." *DeLeon*, 317 Mich App at 720 (quotation marks and citation omitted). A reasonable fact-finder would conclude the touching that occurred here was for a sexual purpose. Defendant was "rubbing [the victim's] back and going up [her] shirt" while she slept. Defendant moved his hand down the victim's back and touched her buttocks, which is defined by statute as an intimate area. MCL 750.520a(f). The act occurred late at night while defendant was the only adult in a room full of sleeping children. The victim testified the act caused her to cry and to quietly remove herself from the bed.

Accordingly, viewing the evidence in the light most favorable to the prosecution, a rational fact-finder could find that defendant committed an intentional touching for a sexual purpose and is guilty of CSC-II. Thus, sufficient evidence was presented to sustain a guilty verdict, and this Court should affirm defendant's conviction.

Next, defendant argues that the guilty verdict was against the great weight of the evidence. "We review for an abuse of discretion a trial court's grant or denial of a motion for a new trial on the ground that the verdict was against the great weight of the evidence." *People v Lacalamita*, 286 Mich App 467, 469; 780 NW2d 311 (2009). However, after a bench trial conviction, the trial court's findings of fact are reviewed for clear error. *People v Lane*, 308 Mich App 38, 67-68; 862 NW2d 446 (2014). "A finding is clearly erroneous if the reviewing court is left with a definite and firm conviction that a mistake was made." *People v Allen*, 295 Mich App 277, 281; 813 NW2d 806 (2011).

A verdict is against the great weight of the evidence, and a new trial must be granted, when "the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result." *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1988) (quotation marks and citation omitted). For the reasons already discussed, defendant's argument that the verdict was against the great weight of the evidence also fails.

Defendant argues the trial court erred in finding that defendant was intoxicated. He argues that speculation regarding intoxication may not be considered evidence. However, when considering the evidence presented, the trial court was able to make reasonable inferences about defendant's state of intoxication. The victim testified defendant was drinking alcohol at the birthday party. When the victim's mother and aunt confronted defendant about the allegation, he said, "I can't say she's lying because I don't know," which implied his intoxicated state prevented him from remembering.

Defendant also argues that defense witness KL's contradicting testimony regarding sleeping arrangements, as well as her testimony that she did not see anything unusual while she slept in the same bedroom as defendant and the victim, should be considered in his challenge to the great weight of the evidence. However, "witness credibility is a question for the fact-finder, and this Court does not interfere with the fact-finder's role." *Solloway*, 316 Mich App at 181-182. The trial court judge had the opportunity to consider the testimony of KL, and contrast it to testimony of the victim. The conclusion the trial court judge made to believe the victim, after being presented with conflicting evidence, in finding defendant guilty may not be second-guessed by this Court. *Lemmon*, 456 Mich at 645.

Defendant's great weight argument also relies on his claim he was asleep at the time, and the purported lack of evidence he was awake. However, as discussed above, defendant's back-and-forth movement over the victim's buttocks with his hand can lead to a reasonable inference that he was awake at the time, and that the movement was voluntary. Defendant may not rely on the lack of direct testimony because caselaw establishes that a defendant's intent can be established by minimal circumstantial evidence. *Cameron*, 291 Mich App at 615.

The evidence and testimony presented at trial did not clearly preponderate against the guilty verdict. *Lemmon*, 456 Mich at 642. Additionally, the trial court's decision was not clearly erroneous because the findings were supported by multiple pieces of evidence, including the victim's testimony defendant was drinking and made movements with his hands that are typically voluntary and intentional. *Oros*, 502 Mich at 239. Thus, defendant's assertion the trial court's verdict was against the great weight of the evidence lacks merit, and a serious miscarriage of justice does not occur if the guilty verdict stands. *Lemmon*, 456 Mich at 642.

Affirmed.

/s/ Stephen L. Borrello
/s/ Kathleen Jansen
/s/ Mark T. Boonstra