

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
February 21, 2012

v

MARIO HUITRON MARTINEZ,
Defendant-Appellant.

No. 303550
Oakland Circuit Court
LC No. 2010-233570-FH

Before: GLEICHER, P.J., and METER and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of third-degree criminal sexual conduct, MCL 750.520d(1)(b) (sexual penetration accomplished using force or coercion), and domestic assault, MCL 750.81(2). Because the evidence was sufficient to support defendant's convictions, we affirm.

This case arises out of the sexual assault of "IA," defendant's former girlfriend. Defendant and IA went out to dinner on the evening in question, and later, after a brief argument, they engaged in consensual sexual intercourse. Shortly after this consensual sexual encounter, IA dressed herself and attempted to leave defendant's home. Defendant, however, was still angry with IA and began to tear off her clothing. He prevented her from leaving by throwing her on his bed and holding her down. He also slapped, bit, and choked her and engaged in nonconsensual sexual intercourse with her on three or four occasions during the evening.

On appeal, defendant argues that insufficient evidence supported his convictions because his conduct constituted mere "sexual play," to which IA consented. We review de novo a challenge to the sufficiency of the evidence. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). "We examine the evidence in a light most favorable to the prosecution, resolving all evidentiary conflicts in its favor, and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond reasonable doubt." *Id.* at 196.

The evidence was sufficient to support defendant's third-degree criminal sexual conduct conviction. The prosecution charged defendant under MCL 750.520d(1)(b) on the theory that he used force or coercion to accomplish sexual penetration. "[T]he prohibited 'force' encompasses the use of force against a victim to either induce the victim to submit to sexual penetration or to seize control of the victim in a manner to facilitate the accomplishment of sexual penetration

without regard to the victim's wishes." *People v Carlson*, 466 Mich 130, 140; 644 NW2d 704 (2002).

When viewed in a light most favorable to the prosecution, the evidence was sufficient for a rational jury to find, beyond a reasonable doubt, that defendant accomplished sexual penetration using force. IA testified that defendant tore her clothes off her body, emptied her purse on the bed, and drew on her face with lipstick. He then had nonconsensual sexual intercourse with her, and prevented her from escaping by holding her down, choking, and slapping her. He also bit IA on her neck and chest. Thus, using violence, defendant "seize[d] control of the victim in a manner to facilitate the accomplishment of sexual penetration without regard to the victim's wishes." *Id.* Although defendant insists that the sexual activity was consensual, IA's testimony vehemently disputes his claim. The jury found IA's testimony credible, and we must defer to the jury's credibility determinations. *People v Williams*, 268 Mich App 416, 419; 707 NW2d 624 (2005). Accordingly, the prosecution presented sufficient evidence to support defendant's third-degree criminal sexual conduct conviction.

The prosecution also presented sufficient evidence to support defendant's domestic assault conviction. We note that, although defendant asserted this issue in his statement of the question presented, he abandoned it by failing to provide any analysis of the issue in the discussion section of his brief. See *People v Payne*, 285 Mich App 181, 187-188; 774 NW2d 714 (2009). Nevertheless, defendant's argument lacks merit. To establish domestic assault, the prosecution was required to prove two elements: (1) an assault or assault and battery, (2) committed on, among other persons, an individual with whom the defendant has or has had a dating relationship. MCL 750.81(2); see also *People v Cameron*, 291 Mich App 599, 614; 806 NW2d 371 (2011). A "battery" is "an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person." *Id.* (quotation marks and citation omitted). Here, defendant and IA were previously in a dating relationship, and defendant committed a battery on IA by biting, slapping, and choking her, holding her down, and drawing on her face with lipstick. Physical evidence supported IA's claim of battery. Thus, the evidence was sufficient for a rational jury to find that the elements of domestic assault had been established beyond a reasonable doubt.

Affirmed.

/s/ Elizabeth L. Gleicher
/s/ Patrick M. Meter
/s/ Pat M. Donofrio