

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 27, 2012

v

BRANDON RANDOLPH WILKINS,

Defendant-Appellant.

No. 305761
Wayne Circuit Court
LC No. 11-003385-FC

Before: FORT HOOD, P. J., and K. F. KELLY and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of kidnapping, MCL 750.349, assault with intent to do great bodily harm less than murder, MCL 750.84, and three counts of first-degree criminal sexual conduct, MCL 750.520b. Because the trial court properly denied defendant's motion for judgment notwithstanding the verdict (JNOV), we affirm.

Defendant's convictions stem from his attack of the victim outside an after-hours club in Detroit. Defendant argues that the trial court erred by denying his motion for JNOV because he engaged in consensual sexual activity with the victim inside the club before the attack, and the evidence was insufficient to show that defendant attacked the victim outside the club. In criminal proceedings, a motion for JNOV is treated the same as a motion for a directed verdict of acquittal, which this Court reviews de novo. *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995); see also *People v Duenaz*, 148 Mich App 60, 64; 384 NW2d 79 (1985). When reviewing the denial of such a motion, "this Court views the evidence in a light most favorable to the prosecution to determine whether the evidence was sufficient to permit a rational factfinder to find the essential elements of the crime proven beyond a reasonable doubt." *People v Partridge*, 211 Mich App 239, 240; 535 NW2d 251 (1995). Circumstantial evidence and reasonable inferences arising therefrom may constitute sufficient proof of the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). This Court will not interfere with the jury's role of determining the weight of the evidence and credibility of the witnesses, and all evidentiary conflicts must be resolved in favor of the prosecution. *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).

Establishing the defendant's identity as the perpetrator is always an essential element in a criminal prosecution. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976). Identity may be established by either direct testimony or circumstantial evidence. *People v Kern*, 6 Mich

App 406, 409-410; 149 NW2d 216 (1967). Further, a victim's testimony alone, if believed, is sufficient for a criminal sexual conduct conviction and need not be corroborated. MCL 750.520h.

The evidence in this case showed that the victim first saw defendant in the bathroom of the club but was alone with him in the bathroom for only a few seconds before she walked out. Thereafter, outside the club, defendant approached her, and said, "F--- me b----, f--- me." When she refused, he grabbed the sleeve of her jacket and pulled her around the corner, into an alley. He pulled down her pants and told her to "get on all fours," which she refused to do. Defendant punched her until she fell to her hands and knees and put his penis inside her mouth. Defendant stopped when he heard a car pass by and pushed the victim deeper into the alley, where he again told her to get on her hands and knees. He then engaged in vaginal-penile penetration with her. She screamed for help when she heard someone yell her nickname, but defendant punched her in the head and said, "Shut the f--- up, b----." He again moved her deeper into the alley, and penetrated her vagina a second time. He ejaculated inside her before he dumped out the contents of the purse that she had been carrying and beat her with his fists until she passed out. A vaginal swab collected from the victim contained DNA evidence that matched a DNA sample taken from defendant.

In the week following the attack, the victim described the perpetrator to her sister, Tanjenika Jackson. Jackson found defendant's photograph on Facebook and showed the victim defendant's picture. The victim indicated that that was the person who had attacked her. She then contacted the police, gave them defendant's name, and identified him in a photographic lineup. When viewed in the light most favorable to the prosecution, the victim's testimony along with the other evidence was sufficient to establish defendant's identify as the perpetrator. "The credibility of identification testimony is a question for the trier of fact that we do not resolve anew." *People v Davis*, 241 Mich App 697, 700; 617 NW2d 381 (2000). Although defendant suggests that there might have been discrepancies in the victim's description of him, any discrepancy between the victim's description and defendant's actual appearance pertains to the weight of the evidence and does not warrant reversal. See *id.* at 705. Because the evidence was sufficient to permit a rational fact-finder to conclude beyond a reasonable doubt that defendant committed the offenses, the trial court properly denied defendant's motion for JNOV.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio