

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

CHARLES DEXTER INGRAM,

Defendant-Appellant.

UNPUBLISHED

July 16, 2013

No. 309035

Saginaw Circuit Court

LC No. 08-031317-FH

Before: SAWYER, 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) (force or coercion), and two counts of fourth-degree criminal sexual conduct, MCL 750.520e(1)(b) (force or coercion). Because the evidence was sufficient to support defendant's convictions, the jury's verdict was not against the great weight of the evidence, and the trial court did not abuse its discretion by denying defendant's motion in limine to admit evidence that was inadmissible under the rape-shield statute, MCL 750.520j(1), we affirm.

Defendant's convictions stem from the sexual assault of "BJ" in the basement of a home that defendant was renovating. BJ testified that her father worked for defendant and that she sometimes accompanied her father and was paid for work that she performed. According to BJ, defendant grabbed her hands and held them behind her back while he pulled her pants down, squeezed her breasts, and vaginally penetrated her with his penis. Defendant testified that the sexual encounter was consensual.

Defendant first argues that the evidence was insufficient to establish that he used force or coercion to accomplish the sexual assault and that, accordingly, the trial court erred by denying his motion for a directed verdict of acquittal. 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 and determine whether a rational trier of fact could have found that every essential element was proven beyond a reasonable doubt. *Id.* at 196. We apply the same standard in reviewing the trial court's denial of a motion for a directed verdict of acquittal. *People v Hartuniewicz*, 294 Mich App 237, 242; 816 NW2d 442 (2011). Circumstantial evidence and reasonable inferences that may be drawn from that evidence can constitute sufficient proof of the elements of an offense. *People v Carines*, 460

Mich 750, 757; 597 NW2d 130 (1999). The inferences to be drawn from the evidence and the weight to accord to those inferences are matters for the trier of fact to determine. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). The trier of fact must also determine questions involving witness credibility. *People v Harrison*, 283 Mich App 374, 378; 768 NW2d 98 (2009).

The prosecution may establish the element of force or coercion by showing that the defendant overcame the victim “through the actual application of physical force or physical violence.” MCL 750.520b(1)(f)(i); MCL 750.520e(1)(b)(i); see also MCL 750.520d(1)(b). “[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).

Here, BJ testified that defendant pushed her over and held her hands behind her during the assault. Defendant contends that the assault could not have occurred as BJ described because he “did not have enough available hands” to restrain BJ while forcibly touching her and removing her clothes as she maintained. Thus, in essence, defendant contends that BJ’s version of events is “patently incredible or defies physical realities.” *People v Lemmon*, 456 Mich 625, 643; 576 NW2d 129 (1998) (quotation marks and citation omitted). Defendant also argues that, considering the size of the house, someone would have heard BJ scream as she claimed she did.

Nothing about BJ’s description of the attack can be characterized as “patently incredible” or contrary to “physical realities.” Defense counsel challenged BJ’s description of the assault, and she continued to maintain that defendant restrained her while at the same time engaging in sexual contact and sexual penetration with her. During a police interview, defendant denied having sexual intercourse with BJ, but he testified that he did engage in sexual intercourse with her, but that the intercourse was consensual. It was ultimately for the jury to determine whose testimony to believe, and we will not interfere with the jury’s role in assessing witness credibility. *Harrison*, 283 Mich App at 378. Moreover, a victim’s testimony alone is sufficient to establish criminal sexual conduct, and such testimony need not be corroborated. MCL 750.520h; *People v Phelps*, 288 Mich App 123, 132; 791 NW2d 732 (2010). Accordingly, the evidence was sufficient to support defendant’s convictions, and the trial court did not err by denying defendant’s motion for a directed verdict of acquittal.

Defendant next argues that the trial court erred by denying his motion for a new trial because the jury’s verdict was against the great weight of the evidence. A verdict contravenes the great weight of the evidence if “the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.” *People v Lacalamita*, 286 Mich App 467, 469; 780 NW2d 311 (2009). A new trial is generally permissible when the evidence does not reasonably support the verdict, and the verdict was “more likely the result of causes outside the record, such as passion, prejudice, sympathy, or some other extraneous influence.” *Id.*

Defendant contends that his own testimony prejudiced the jury and undermined the verdict. In particular, defendant argues that, during cross-examination, the prosecution elicited testimony regarding his womanizing behavior, which caused the jury to dislike him. The record

shows that it was defendant, rather than the prosecution, who introduced the subject. During questioning regarding defendant's claim that he paid BJ for sexual intercourse, defendant testified that women usually paid him for sexual intercourse because he knows "how to treat a woman." Defendant cannot now claim error predicated on a matter that he himself raised at trial. "To hold otherwise would allow defendant to harbor error as an appellate parachute." *People v Fetterley*, 229 Mich App 511, 520; 583 NW2d 199 (1998). In any event, it is unlikely that defendant's brief account of his self-proclaimed sexual prowess caused the jury to convict him based on reasons other than the evidence concerning the sexual assault itself. In short, the evidence did not preponderate so heavily against the verdict that a miscarriage of justice would result if the verdict was allowed to stand. *Lacalamita*, 286 Mich App at 469. The trial court therefore did not err by denying defendant's motion for a new trial.

Finally, defendant argues that the trial court erroneously denied his motion in limine to allow evidence of BJ's prior sexual history with third parties. We review for an abuse of discretion a trial court's decision to admit evidence. *People v Gursky*, 486 Mich 596, 606; 786 NW2d 579 (2010). An abuse of discretion occurs when the court's decision "falls outside the range of principled outcomes." *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010) (quotation marks and citation omitted).

Generally, all relevant evidence is admissible at trial. MRE 402. "Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence". MRE 401. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . ." MRE 403.

MCL 750.520j(1), commonly known as the rape-shield law, provides:

Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admitted [in a criminal sexual conduct prosecution] unless and only to the extent that the judge finds that the following proposed evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value:

- (a) Evidence of the victim's past sexual conduct with the actor.
- (b) Evidence of specific instances of sexual activating showing the source or origin of semen, pregnancy, or disease.

During trial defendant sought to admit: (1) testimony from a man who claimed to have had a sexual encounter with BJ, who then falsely accused him of impregnating her and began stalking him; (2) testimony from the man's supervisor that he had spoken with BJ about the stalking; and (3) testimony from a third man claiming that BJ "would hit on anyone" and had "tried to get with him." The third man's proposed testimony constituted reputation evidence that was inadmissible under MCL 750.520j(1). In addition, the supervisor's proposed testimony was derivative of the man who claimed to have had a casual sexual encounter with BJ, evidence of which was also inadmissible under the rape-shield statute. Further, the proffered evidence was

not relevant to whether BJ consented to the particular sexual encounter at issue as defendant claimed. Therefore, the trial court did not abuse its discretion by denying defendant's motion in limine to introduce the evidence.

Affirmed.

/s/ David H. Sawyer

/s/ Patrick M. Meter

/s/ Pat M. Donofrio