

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES EDWARD CISCO,

Defendant-Appellant

UNPUBLISHED

November 24, 2009

No. 288101

Wayne Circuit Court

LC No. 08-007208-FH

Before: Talbot, P.J., and O’Connell and Davis, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of fourth-degree criminal sexual conduct (CSC IV – force or coercion), MCL 750.520e(1)(b). Defendant was sentenced to six months in jail and 60 months’ probation. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant’s sole issue on appeal is that insufficient evidence of force or coercion was presented at trial to sustain his conviction. In part, defendant relies on the victim’s inconsistent statements, faulty memory, and impeached testimony to support his claim of insufficient evidence.

Questions pertaining to the sufficiency of the evidence are reviewed de novo, in a light most favorable to the prosecution, to determine whether a rational trier of fact could find guilt beyond a reasonable doubt for each element of the crime. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Tombs*, 260 Mich App 201, 207; 679 NW2d 77 (2003). The prosecution is required to prove its theory of the crime beyond a reasonable doubt in the face of contradictory evidence. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The victim is an older woman with memory problems incurred subsequent to a stroke. The victim’s daughter testified that her mother currently functions at the intellectual level of a seven-year old child. Defendant is the victim’s nephew. The victim testified that defendant came uninvited to her home while she was alone. Defendant offered the victim cigarettes in exchange for sex and the victim refused. The victim asserted that defendant pulled down her shorts and underpants and attempted to penetrate her from behind. The victim testified that defendant maintained his hand on her hip while she was bent over and that “he tried to ram me.” The assault was interrupted when the victim’s grandchild knocked on her door.

Force or coercion is not limited to only those scenarios of physical violence or threats of physical violence elucidated in the statute. See MCL 750.520e(1)(b)(i) to (v). Force includes inducing a victim to submit to a sexual act against her will or seizing control of a victim in order to facilitate a sexual act against the victim's wishes and does not require that a victim be overcome by physical force. *People v Carlson*, 466 Mich 130, 140; 644 NW2d 704 (2002). Force or coercion has been found to exist in cases where a defendant was in a position of trust or authority, *People v Premo*, 213 Mich App 406, 409; 540 NW2d 715 (1995), and where "lack of consent and physical helplessness were clear," *People v Brown*, 197 Mich App 448, 450; 495 NW2d 812 (1992). Whether force or coercion existed will be determined following consideration of the facts and circumstances in each case. *Id.*; *People v McGill*, 131 Mich App 465, 472-476; 346 NW2d 572 (1984).

The victim testified that defendant seized control over her without her consent by pulling down her clothing and maintaining a hand on her hip during the assault. Her testimony does not have to be corroborated. MCL 750.520h; *People v Smith*, 149 Mich App 189, 195; 385 NW2d 654 (1986). Defendant's status as a family member in conjunction with the victim's impaired mental capacity demonstrates the victim's vulnerability to coercion by defendant. The victim also testified that defendant told her not to tell anyone about what had transpired. The victim's daughter stated that when questioning her mother, the victim seemed "very nervous and scared, kind of afraid...as if she felt like she was going to be in trouble." Viewed in its totality, the testimony provided sufficient evidence from which a rational trier of fact could conclude the use of force or coercion by defendant to make sexual contact with the victim.

The trier of fact determines what inferences to draw from the evidence presented and what weight to give such inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). The jury was aware of the victim's contradictory testimony, difficulties with her memory and impaired mental capacity. Despite these problems, the jury clearly elected to place greater weight on the victim's testimony than on defendant's general denial of the events. This Court will not intrude on the factfinder's role of determining either the credibility of the witnesses or the weight of the evidence. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Affirmed.

/s/ Michael J. Talbot
/s/ Peter D. O'Connell
/s/ Alton T. Davis