

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
May 14, 2013

v

JASON SCOTT HALEY,
Defendant-Appellant.

No. 310261
Ingham Circuit Court
LC No. 11-000777-FC

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

JASON SCOTT HALEY,
Defendant-Appellant.

No. 310267
Ingham Circuit Court
LC No. 11-000817-FH

Before: FORT HOOD, P.J., and FITZGERALD and O'CONNELL, JJ.

PER CURIAM.

In Docket No. 310261, defendant was convicted, following a jury trial, of two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(b). In Docket No. 310267,¹ defendant was convicted, in the same jury trial, of one count of second-degree criminal sexual conduct (CSC), MCL 750.520c(2)(b). He was sentenced as a habitual offender, fourth offense, MCL 769.12, to concurrent terms of 400 to 600 months' imprisonment for the first-degree CSC

¹ The appeals were consolidated "to advance the efficient administration of the appellate process." *People v Haley*, unpublished order of the Court of Appeals, entered June 20, 2012 (Docket Nos. 310261, 310267).

convictions,² and 150 to 300 months' imprisonment for the second-degree CSC conviction. Defendant's convictions arise from the sexual assault of his daughter and the daughter of an ex-girlfriend. Although he did not testify, his witnesses and his theory of the case challenged the lack of opportunity to commit the crimes, the lack of corroborating evidence, and the credibility of the witnesses. Despite these challenges, the jury convicted him of three of six counts.³ Defendant appeals by right, and we affirm.

Defendant first alleges that there was insufficient evidence to support his convictions. He does not challenge the individual elements of the convicted offenses, but rather alleges there was no physical or other corroborating evidence to support the convictions. A challenge to the sufficiency of the evidence is reviewed de novo. *People v Malone*, 287 Mich App 648, 654; 792 NW2d 7 (2010). To determine whether the prosecution presented sufficient evidence to sustain the convictions, the evidence must be examined in the light most favorable to the prosecution and whether a rational trier of fact could find that all of the elements of the crimes were proved beyond a reasonable doubt. *People v Phelps*, 288 Mich App 123, 131-132; 791 NW2d 732 (2010). Conflicts in the evidence are resolved in favor of the prosecution, and circumstantial and reasonable inferences arising from that evidence may constitute proof of the elements of the crime. *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010). This Court does not interfere with the trier of fact's determination regarding the weight of the evidence or the credibility of the witnesses. *People v Eisen*, 296 Mich App 326, 331; 820 NW2d 229 (2012).

Although there was no corroborating physical evidence, the testimony by the victims was adequate evidence to support the convicted offenses. MCL 750.520h. "It is a well-established rule that a jury may convict on the uncorroborated evidence of a CSC victim[.]" *People v Lemmon*, 456 Mich 625, 642 n 22; 576 NW2d 129 (1998). Where the only witnesses to a CSC crime are the victim and the perpetrator, the decision by the jury is essentially based on the jury's assessment of the credibility of the witnesses. *Id.* Deference must be given to the jury's resolution of the credibility of the witnesses. *Id.* Accordingly, the lack of corroborating evidence does not entitle defendant to appellate relief.

Next, defendant contends that his sentences constituted cruel and unusual punishment in light of his age and their duration. We disagree. "[A] sentence within the guidelines range is presumptively proportionate, and a sentence that is proportionate is not cruel or unusual punishment[.]" *People v Powell*, 278 Mich App 318, 323; 750 NW2d 607 (2008) (citations omitted). "In order to overcome the presumption that the sentence is proportionate, a defendant must present unusual circumstances that would render the presumptively proportionate sentence

² The parties' briefs on appeal assert that defendant was convicted of three counts of first-degree CSC. In Docket No. 310261, our review of the verdict form and the judgment of sentence indicate that defendant was only convicted of two counts of first-degree CSC.

³ In Docket No. 310261, the jury was unable to reach a decision regarding three additional counts of first-degree CSC, and the trial court ordered a mistrial on those counts. The prosecutor opted not to retry those counts, and an order of nolle prosequi was entered by the trial court on July 18, 2012.

disproportionate.” *People v Lee*, 243 Mich App 163, 187; 622 NW2d 71 (2000). A defendant’s age, parole considerations, and the comparison of penalties to other crimes are not unusual circumstances that overcome the presumption of proportionality. See *People v Bowling*, ___ Mich App ___; ___ NW2d ___ (2013), slip op pp 3-4. Accordingly, defendant’s challenge is without merit.

Affirmed.

/s/ Karen M. Fort Hood
/s/ E. Thomas Fitzgerald
/s/ Peter D. O’Connell