

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TONI M. COX,

Defendant-Appellant.

UNPUBLISHED

February 17, 1998

No. 201527

Oakland Circuit Court

LC Nos. 95-137384 FH

95-137385 FH

95-137386 FH

Before: Markey, P.J., and Doctoroff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals by right her jury conviction, in lower court files covering three separate incidents, of five counts of third-degree criminal sexual conduct, involving sexual penetration with a person under the age of sixteen, MCL 750.520d(1)(a); MSA 28.788(4)(1)(a), and one count of contributing to the delinquency of a minor, MCL 750.145; MSA 28.340. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

During the third of the three incidents, the prosecution's evidence indicated that defendant engaged in sexual activity not only with the same fourteen-year old victim involved in the prior two incidents, but also with a group of additional males. There was no objection to evidence concerning the sexual activity with other persons, but defendant now contends that admission of such evidence was in violation of MRE 404(b). In the alternative, she contends that if the lack of objection results in waiver of appellate review of this issue, her trial counsel was ineffective in failing to timely object.

Both arguments are without merit. The contested evidence was part of the *res gestae* of the third incident and admissible as such without reference to "other acts" evidentiary principles. *People v Quimby*, 134 Mich 625, 633; 96 NW 1061 (1903). Accordingly, objection would have been futile, and trial counsel cannot be faulted for failing to interpose a meritless objection. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Affirmed.

/s/ Jane E. Markey

/s/ Martin M. Doctoroff

/s/ Michael R. Smolenski