STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAMONE D. JONES,

Defendant-Appellant.

UNPUBLISHED
January 19, 1999

No. 205534
Wayne Circuit Court
96-008537

Before: Hoekstra, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant Ramone D. Jones was convicted of two counts of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). The trial court sentenced defendant to concurrent terms of eight to fifteen years in prison for each conviction. Defendant appeals as of right, and we affirm.

Defendant argues on appeal that the prosecution failed to present sufficient evidence that the victim was between the ages of thirteen and sixteen, and that defendant used force or coercion, to support his conviction. We disagree. When reviewing the sufficiency of evidence in a criminal case, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could conclude that the elements of the crime were proved beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994); *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998).

Contrary to defendant's assertions, in this case the prosecution was not required to prove that the victim had been between the ages of thirteen and sixteen. The prosecution amended the information at trial, stating, "At this time, . . . as to . . . Ramone Jones, we're asking it to be amended to criminal sexual conduct in the third-degree, and that would read, 'Did engage in the sexual penetration to wit: cunnilingus with [the victim], said defendant did this with force and coercion.'" The prosecution further stated, "Count III . . . would be criminal sexual conduct. The people would amend that to read criminal sexual conduct third degree instead of first-degree, eliminate the weapon used, and did engage in sexual penetration, to wit: sexual intercourse with [the victim], with force or coercion."

Third-degree criminal sexual conduct occurs where the actor engages in "sexual penetration with another person under certain circumstances, including where the penetration is accomplished by force or coercion . . . ." *People v Hutner*, 209 Mich App 280, 283; 530 NW2d 174 (1995). *Hutner* referenced the applicable statute, which provides in pertinent part as follows:

> A person is guilty of criminal sexual conduct in the third degree if the person engages in sexual penetration with another person and *if any of the following circumstances exist*:
>
> (a) That other person is at least 13 years of age and under 16 of age.
>
> (b) *Force or coercion is used to accomplish the sexual penetration*. [MCL 750.520d(1)(a) and (b); MCL 28.788(4)(1)(a) and (b) (emphases added).]

The prosecutor's amendment of the information on the record amply put defendant on notice that he was being charged with third-degree criminal sexual conduct, which, according to the statute's plain language, does not require the prosecutor to prove that the victim was between the ages of thirteen and sixteen years *and* that the actor used force or coercion; rather, those conditions are two among the several enumerated grounds for conviction under the statute, only one of which need be proved in order to obtain a valid conviction. Thus, having in this case proved force or coercion, the prosecutor had no need to present evidence concerning any of the other bases for conviction, including the victim's age.

Regarding whether the prosecution presented sufficient evidence of force or coercion to support a conviction premised on that element, "force or coercion" means that defendant either used physical force or did something to make the victim reasonably afraid of present or future danger. *People v Kline*, 197 Mich App 165, 166; 494 NW2d 756 (1992). In *Kline*, the defendant instructed the complainant to remove her panties while he grabbed her breast. *Id.* at 167. The complainant did not specifically feel physically threatened, but the defendant refused to comply with the complainant's expressed wishes that he stop his advances. *Id*. Further, on one occasion, penetration occurred in a basement where the victim was isolated from help. *Id.* This evidence was sufficient to support the finding that the defendant compelled the complainant, by force or coercion, to participate in sexual intercourse. *Id*. See also *People v McGill*, 131 Mich App 465, 474; 346 NW2d 572 (1984) (where the actor persists in sexual aggression over the protestations of a younger and weaker victim, at an isolated location, force or coercion exists for purposes of fourth-degree criminal sexual conduct).

In the instant case, according to the evidence as considered in the light most favorable to the prosecution, the victim told defendant to stop both when he penetrated her and when he put his lips on her vagina. Further, she repeatedly refused defendant's earlier advances when he tried to kiss and touch her. The victim testified that she did not offer physical resistance because she knew that defendant was stronger than she and that fighting would thus be futile. The victim further testified that she had been frightened of both defendant and codefendant and complied with their demands out of fear. Additionally, the evidence indicates that the victim reasonably believed that defendant and codefendant were threatening her. Specifically, codefendant gestured by putting his index finger to the right side of his neck and moving it across to the left side while whispering to defendant. The victim

stated that she believed that this gesture indicated that codefendant, who was walking around with a knife in his hand throughout the night, might slit her throat.

In *Kline*, *supra*, the complainant believed she was being forced but did not believe she was being threatened. *Id*. at 167. Here, the victim believed she was being both forced and threatened. The facts of this case present an even more egregious case of force or coercion than those in *Kline*, in that here the victim repeatedly expressed her objections and reasonably understood herself to be threatened. This evidence, when viewed in the light most favorable to the prosecution, amply supports a finding of force or coercion for purposes of convicting defendant of third-degree criminal sexual conduct.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell