

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL PANTALONE,

Defendant-Appellant.

UNPUBLISHED

February 23, 1999

No. 203356

Oakland Circuit Court

LC No. 96-145710 FH

Before: Murphy, P.J., and MacKenzie and Talbot, JJ.

MEMORANDUM.

Defendant pleaded no contest to fourth-degree criminal sexual conduct, MCL 750.520e; MSA 28.788(5), and to being an habitual offender, third offense, MCL 769.11; MSA 28.1083. He was sentenced to eighteen months of probation. Defendant appeals by right, and we affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

At the plea hearing, defense counsel stipulated to the use of a police report to establish the factual basis for defendant's criminal sexual conduct plea. This is a permissible and frequently employed method of satisfying the hearing requirements of the court rules. *People v Johnson*, 122 Mich App 26, 29; 369 NW2d 520 (1982). See also, *People v Rexford*, 228 Mich App 371, 372; 579 NW2d 111 (1998); *People v Hannan, (After Remand)*, 200 Mich App 123, 125 n 1; 504 NW2d 189 (1993). We reject defendant's contention that under-oath testimony was required.

According to the police report, defendant "grabbed" the victim's breasts and "kissed her on both the mouth and the neck," after he "awoke" from having "some type of seizure." Although defendant relies on the fact that he was coming out of a seizure to assert that he did not act intentionally and for a sexual purpose, we find that the defendant's reported kissing of the victim supports a reasonable inference that defendant touched the victim's breasts intentionally for the purpose of sexual arousal or gratification, even if exculpatory inferences might also be drawn. See *Guilty Plea Cases*, 395 Mich 96, 130; 235 NW2d 132 (1975). We also find the police report of defendant "grabbing" the victim's breasts sufficient to establish the element of force or coercion. See *People v Premo*, 213 Mich App 406; 540 NW2d 715 (1995), lv den 450 Mich 952 (1995).

Because we find that the factual basis for defendant's plea was established properly by the police report, in lieu of sworn testimony, we find no abuse of discretion in the trial court's denial of defendant's motion for plea withdrawal after sentencing, and we also conclude that defendant has failed to meet his burden of showing constitutionally deficient performance by his counsel and resulting prejudice.

Affirmed.

/s/ Barbara B. MacKenzie

/s/ William B. Murphy

/s/ Michael J. Talbot