

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENA S. ALDERSON,

Defendant-Appellant.

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UNPUBLISHED

July 16, 1999

No. 206298

Oakland Circuit Court

LC No. 96-146791 FH

Before: Hood, P.J., and Holbrook, Jr., and Whitbeck, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of keeping a house of ill fame, MCL 750.452; MSA 28.707. Thereafter sentenced to one year of probation, defendant appeals as of right. We affirm.

Defendant operated a sadomasochism business with two employees who paid her a portion of the fees they generated. Responding to an advertisement, an undercover officer arranged to enact his “sexual fantasies” in return for \$200. Although many other options were available, the officer’s choice included anal penetration, spanking, and tying of his genitals, all of which were to occur with the officer naked and restrained.

Initially, defendant argues that the statute prohibiting the operation of a place resorted to for prostitution or lewdness is unconstitutionally vague. Questions involving the constitutionality of statutes are reviewed de novo. *People v Piper*, 223 Mich App 642, 645; 567 NW2d 483 (1997). We accord a strong presumption of validity and constitutionality to statutes and construe them to be constitutional in the absence of a clear showing of unconstitutionality. *Id.*

We conclude that the questioned statute provided defendant with fair notice that her behavior was illegal. A statute is not unconstitutionally vague if it defines the criminal behavior such that “ordinary people can understand what conduct is prohibited.” *People v Lino*, 447 Mich 567, 575; 527 NW2d 434 (1994), quoting *Kolender v Lawson*, 461 US 352, 357; 103 S Ct 1855; 75 L Ed 2d 903 (1983). Defendant admits to receiving fair notice that it is a crime to accept money in exchange for sexual acts. However, she argues that, because the purpose of these acts was to produce pain rather

than pleasure, these acts were not sexual. Defendant cites no authority for the proposition that an act cannot be sexual unless done for the purpose of producing sexual gratification.

“A statute is not vague if the meaning of the words in controversy can be fairly ascertained by reference to judicial determinations, the common law, dictionaries, treatises, or their generally accepted meaning.” *People v Vronko*, 228 Mich App 649, 653; 579 NW2d 138 (1998). We believe that defendant received fair notice that her actions were illegal because the meaning of “sexual acts” is readily ascertainable as including sexual contact and sexual penetration, both of which were clearly involved in the acts at issue in this case.

The Legislature has defined “sexual penetration” as “sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body.” MCL 750.520a(l); MSA 28.788(1)(l); *People v Hammons*, 210 Mich App 554, 557; 534 NW2d 183 (1995). The definition of “sexual penetration” does not depend on the intent of any of the participants, nor on whether the result of the intrusion is pleasure or pain.

The Legislature has defined “sexual contact” as including “the intentional touching of the victim’s or actor’s intimate parts . . . if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification.” MCL 750.520a(k); MSA 28.788(1)(k); *People v Fisher*, 77 Mich App 6, 12-13; 257 NW2d 250 (1977).<sup>1</sup> A defendant’s conduct can constitute sexual contact even if he acts without the specific intent to cause sexual arousal or gratification. *Fisher, supra* at 13. It is enough if an actor touches an intimate area intentionally, and a reasonable person could construe the touching as being for the purpose of sexual gratification. *Id.* The definition of “intimate parts” includes genitals and buttocks. MCL 750.520a(c); MSA 28.788(1)(c); *Fisher, supra* at 12.

In this case, defendant’s employee offered to act out an ostensible customer’s “sexual fantasy,” in part, by inserting objects into his anus, spanking him, and tying his genitals in return for money. Anal penetration is “sexual penetration,” and is, therefore, a sexual act. See MCL 750.520a(l); MSA 28.788(1)(l). We believe the remaining acts constitute “sexual contact” because there was undisputedly intentional contact with intimate body parts, and a reasonable person could construe these contacts as being for sexual gratification. Defendant’s contention that she did not receive fair notice that her actions were illegal is without merit.

We also believe that the statute is not so indefinite that it confers unlimited discretion on the trier of fact to determine whether an offense has been committed. A statute is void for vagueness if the Legislature fails to provide minimal guidelines to law enforcement such that police officers, prosecutors and juries are free to pursue their own personal predilections. *People v Petrella*, 424 Mich 221, 254; 380 NW2d 11 (1985), quoting *Kolender, supra* at 357-358. Under the facts of this case, neither the police, nor the prosecutor, nor the jury had unlimited discretion to pursue their personal predilections in enforcing the statute against maintaining an establishment for prostitution or lewdness. See *id.* As discussed above, the Legislature, as well as the judiciary, has provided guidance to determine that defendant’s behavior constituted sexual acts. Further, the Michigan Supreme Court has instructed that “lewdness does include some sexual activities that stop just short of prostitution, as well as scandalous

sexual exhibitions.” *State ex rel Wayne Co Prosecutor v Dizzy Duck*, 449 Mich 353, 364; 535 NW2d 178 (1995). Therefore, when defendant operated an establishment to perform acts such as those described by the undercover officer in return for money, she violated the statute. Defendant has not met her burden of proving that the statute is clearly unconstitutional. See *Piper, supra* at 645.

Defendant next argues that the prosecution presented insufficient evidence on which to convict her. When a defendant appeals a conviction on the ground that there was insufficient evidence to support the conviction, “this Court views the evidence in the light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt.” *People v Quinn*, 219 Mich App 571, 573-574; 557 NW2d 151 (1996).

Defendant does not contest the prosecution’s evidence, nor does she present conflicting evidence. Instead, defendant argues that this evidence does not show a violation of the statute because acts cannot be prostitution or lewdness if they are not sexual, and they are not sexual unless performed with the intent to provide sexual gratification. It is undisputed that defendant’s employee offered to perform these acts on an undercover officer in return for money. This evidence, viewed in the light most favorable to the prosecution, is sufficient for this Court to hold that a rational trier of fact could have found that prostitution and/or lewdness was proved beyond a reasonable doubt. See *id.* Defendant’s argument that she was denied her right to due process because she was convicted on insufficient evidence is without merit.

Affirmed.

/s/ Harold Hood

/s/ Donald E. Holbrook, Jr.

/s/ William C. Whitbeck

<sup>1</sup> We recognize that the above definitions of “sexual penetration” and “sexual contact” in MCL 750.520a; MSA 28.788 are only expressly applicable to the criminal sexual conduct section of the penal code. Nevertheless, we regard those definitions to provide reasonable notice of some of the acts that the Legislature regards to be sexual in nature. We see little reason why the Legislature would regard a particular act to be “sexual” in one context but not in another context.