STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER ALAN TURPEN,

Defendant-Appellant.

UNPUBLISHED
August 3, 1999

No. 206024
Washtenaw Circuit Court
LC No. 96 00 6381 FH

Before: Markey, P.J., and Saad and Collins, JJ.

PER CURIAM.

Defendant was convicted by jury of third-degree criminal sexual conduct (CSC 3), MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). The trial court sentenced defendant to two to fifteen years' imprisonment. Defendant appeals as of right. We reverse.

On appeal, defendant claims that his conviction must be reversed because the prosecution presented insufficient evidence of force to prove defendant's guilt beyond a reasonable doubt. [1] We agree. When reviewing the sufficiency of the evidence in a criminal case, we examine the evidence of record in a light most favorable to the prosecution and determine whether a rational trier of fact could conclude that each element of the crime was proved beyond a reasonable doubt. *People v Head*, 211 Mich App 205, 210; 535 NW2d 563 (1995). Circumstantial evidence and any reasonable inferences that may be drawn from it constitute sufficient proof for the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). Here, there was insufficient evidence of coercion.

A person is guilty of CSC-3 if the person engages in sexual penetration with another person and "force or coercion is used to accomplish the sexual penetration." MCL 750.520d; MSA 28.788(4). With respect to "force or coercion", the statute references MCL 750.520b(1)(f)(i) to (v); MSA 28.788(2)(1)(f)(i) to (v), which provides:

Force or coercion includes, but is not limited to the following circumstances:

(i) When the actor overcomes the victim through the actual application of physical force or physical violence.

(ii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. . . .

(iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. . . .

(iv) When the actor engaged in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable.

(v) When the actor, through concealment or by the element of surprise, is able to overcome the victim. [MCL 750.520b(1)(f)(i) to (v); MSA 28.788(2)(a)(f)(i) to (v).]

The trial court found that the prosecution satisfied the coercion element by proving "psychological coercion."

The facts of this case, as alleged by complainant, do not fit any of the statutory examples of coercion. We recognize that these provisions do not constitute an exclusive definition of coercion, and that circumstances not fitting the statute might still present sufficient evidence of coercion. However, we cannot interpret this language so loosely as to say that the prosecution can prove coercion solely by the complainant's subsequent declaration that she subjectively regarded herself an unwilling participant in the sexual activity.

Here, we find no evidence of coercion, including psychological coercion. The allegation that complainant had already refused defendant when he initiated intercourse does not, by itself, establish coercion. There is no evidence from which a trier of fact could infer that defendant utilized any form of psychological manipulation to accomplish the intercourse.

This case is distinguishable from *People v Brown*, 197 Mich App 448; 495 NW2d 812 (1992). There, the Court found coercion where the defendant:

> after giving some money to the man who brought the victim into a house [against her will], had sex with her. He found her sitting in a bedroom, alone, naked, and crying. He disregarded her requests to go home and her statements that she did not want to be there and did not want to have intercourse. Defendant's assertion that he did not know that the victim had been kidnapped and raped by her kidnapper and by other men in the house is not sufficient to negate the fact *that he forced himself upon her in a situation where her lack of consent and physical helplessness were clear*. [*Id.*, 450 (emphasis added).]

This case is also distinguishable from *People v Kline*, 197 Mich App 165; 494 NW2d 756 (1992), where:

> the sixteen-year-old complainant testified that she believed she was being forced by her *stepfather* to remove her panties, although she did not believe that she was being threatened. Defendant grabbed her breasts *while repeatedly telling her to remove her panties and to not tell her mother what happened. Each time the complainant told defendant to stop, defendant failed to comply*. One of the instances of penetration occurred in a basement where, arguably, *the complainant was isolated from help*. [*Id.*, 167.]

Here, the complainant was an adult woman, in her own home, with a man she had lived with for fifteen years, and with whom she had had three children. The helplessness and vulnerability of the complainants in *Kline* and *Brown* were clearly absent. It may have been immoral and disrespectful for defendant to persist in his requests after complainant's refusals, but we cannot say that this was coercion within the meaning of the statute.[2]

Reversed.

/s/ Henry William Saad
/s/ Jeffrey G. Collins

I concur in result only.

/s/ Jane E. Markey

[1] The question presented on appeal contends that the lower court committed error in its denial of defendant's motion for a new trial; however, it is argued by defendant that there was insufficient evidence to prove defendant's guilt beyond a reasonable doubt. We addressed this issue on appeal as a claim of insufficient evidence.

[2] Furthermore, complainant testified that she might have said "go ahead and get it over with" to defendant.