

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DARREN REESE,

Defendant-Appellee.

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UNPUBLISHED

February 25, 2000

No. 211723

Recorder's Court

LC No. 97-004968

Before: Meter, P.J., and Griffin and Owens, JJ.

PER CURIAM.

Defendant was tried by a jury for third-degree criminal sexual conduct, MCL 750.520d(1)(a); MSA 28.788(4)(1)(a). He was also supplemented as a third habitual offender, MCL 769.11; MSA 28.1083. At the conclusion of the prosecution's case in chief, the trial court granted defendant's motion for a directed verdict and entered an order of acquittal. The prosecution appeals as of right. We reverse.

When ruling on a motion for a directed verdict, the trial court must view the prosecution's evidence, at the time the motion is made, in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Vincent*, 455 Mich 110, 121; 565 NW2d 629 (1997); *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 478 (1992), amended 441 Mich 1201 (1992), citing *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979). If the evidence is insufficient to support a conviction, due process requires that the trial court direct a verdict of acquittal. MCR 6.419(A); *People v Lemmon*, 456 Mich 625, 633-634; 576 NW2d 129 (1998). In ruling on a motion for directed verdict, the trial court may not assess the credibility of witnesses, no matter how inconsistent or vague that testimony might be. *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997). The court should not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *Wolfe, supra* at 514-515. All conflicts in the evidence must be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

Defendant was charged with third-degree criminal sexual conduct. "Third-degree criminal sexual conduct is a general intent crime proved by showing that the defendant committed a proscribed

sexual act.” *People v Corbiere*, 220 Mich App 260, 266; 559 NW2d 666 (1996). The criminal sexual conduct statute provides in relevant part:

(1) 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 exists:

(a) That other person is at least 13 but less than 16 years of age. [MCL 750.520d(1)(a); MSA 28.788(4)(1)(a).]

In this case, the prosecution’s evidence consisted of the victim’s testimony and defendant’s statement to the police. The victim testified that defendant committed an act of sexual penetration against her. She also testified that, at the time of the incident, she was thirteen years old. The victim stated that defendant took her and others to Burger King afterward. In his statement, defendant admitted to being at the house in February 1997, the month of the alleged incident. Defendant also admitted that he took a group of girls, including the victim, to Burger King, which is consistent with her testimony. Defendant denied having sexual intercourse with the victim.

We hold that the prosecution presented sufficient evidence from which the jury could have found defendant guilty of the offense charged beyond a reasonable doubt. The conflicting evidence between the victim’s allegation of sexual intercourse and defendant’s denial must be resolved in favor of the prosecution for the purpose of ruling on defendant’s motion for directed verdict. *Vincent, supra* at 121. If the jury believed the victim’s testimony that defendant had sexual intercourse with her when she was thirteen years old, that testimony would have provided a sufficient basis to support a guilty verdict. Contrary to the trial court’s ruling, the victim adequately identified defendant in court. In addition, defendant’s statement provided evidence that he was at the location in question. In its ruling, the trial court acknowledged that the victim had “mouthed the elements” of the offense. Accordingly, we conclude that the trial court improperly granted defendant’s motion for directed verdict.

Defendant argues that the directed verdict serves as an acquittal, and that double jeopardy precludes his retrial in this matter. We recognize that “a person may not be twice placed in jeopardy for a single offense.” US Const, Am V; Const 1963, art 1, § 15; *Mehall, supra* at 4. Our Supreme Court has held that if a directed verdict is not actually based upon a finding of insufficient evidence, the verdict is not an acquittal and a defendant may be retried without violating double jeopardy protections. *Id.* at 3. Therefore, defendant may be retried if the actual basis of the directed verdict was not insufficient evidence as required by MCR 6.419(A), because under such circumstances, defendant was not “acquitted.” *Mehall, supra* at 3.

In *Mehall*, our Supreme Court held that where the trial court’s ruling was based upon its consideration of the witness’ credibility, the directed verdict was not an order of acquittal. *Id.* at 6-7. With regard to the trial court’s ruling on a motion for directed verdict, substance controls over form. *Id.* at 5. The trial court articulated the proper standard and reasons for its ruling. However, it is necessary to examine the court’s basis for directing a verdict for defendant to determine whether the ruling was indeed based upon insufficient evidence. *Id.* at 5. The judge opined on the victim’s credibility at length.

The judge acknowledged that the victim “mouthed the elements.” The trial court further noted that its determination was based on its observations of the victim as she testified. It is apparent from the record that the judge did not believe the victim’s testimony, and directed the verdict despite the existence of sufficient evidence of all the elements of the offense. We conclude that in this case, as in *Mehall, supra* at 6-7, the trial court’s findings indicate that its decision was based upon its determination of credibility rather than insufficiency of the evidence. The directed verdict did not serve as an acquittal, and therefore, defendant may be retried.

Reversed.

/s/ Patrick M. Meter  
/s/ Richard Allen Griffin  
/s/ Donald S. Owens