STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 7, 2000
v	No. 213420 Wayne Circuit Court
ROLAND O. MOORE, Defendant-Appellant.	LC No. 97-010104

Before: O'Connell, P.J., and Kelly and Whitbeck, JJ.

PER CURIAM.

Defendant Roland O. Moore appeals as of right from his bench trial conviction for second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). The trial court sentenced Moore to five to fifteen years' imprisonment.[1] We affirm.

I. Basic Facts And Procedural History

The facts are short and simple. At approximately 9:00 p.m. on August 13, 1997, Moore brought the four-year-old complainant, his cousin, to her grandmother's house in Detroit. Later that evening, the complainant's grandmother was helping her undress when she discovered "specks of blood" on the child's undergarment. Thereafter, the complainant's mother and grandmother took the little girl to the emergency room at Mercy Hospital. Apparently, the police later took the complainant to Children's Hospital.

Dr. Fowler examined the complainant. The parties stipulated that he was an expert and agreed to admit his report concerning his findings from the examination. That report stated:

> In the vagina, and the vaginal hood, no signs of trauma. There are no signs of trauma. There is no trauma to the peritoneal body.

[1] At sentencing, Moore pleaded guilty to a probation violation for a previous CSC II offense and was sentenced to serve five to fifteen years for that violation.

> There is a superficial one centimeter laceration over the peritoneal body. Peritoneal is spelled P-e-r-i-t-o-n-e-a-l.
>
> The external genitalia has no trauma. The internal and external genitalia has no trauma. No discharge.

The parties also stipulated to admit a report in which the complainant's mother stated that she believed that Moore may have sexually assaulted the complainant. The report also noted that the complainant said that Moore touched her "booty," meaning her vagina, with his hand.

Police Officer Andrew Sims told the trial court that Moore made a written statement after being advised of his *Miranda*[2] rights. Sims read the statement into the record:

> I was playing with [the complainant], picking her up. And my finger slipped up in her vagina. I pulled it out. And I went to the store and got a pop. I'm very sorry. I want to know if I can go to counseling, so I can get my life back.
>
> This only happened one time. I'm not that kind of person that will mess with little kids. I promise not to go around [the complainant] until I get some help.
>
> All that other stuff on there was a lie. I didn't put my penis in her butt or vagina.

At the close of proofs, defense counsel argued that the evidence was insufficient to convict because,

> if the Court accepts all the testimony that has been offered here, I would only argue that the People have not shown that there was a Criminal Sexual Conduct in the First Degree.
>
> The medical evidence shows that there was no trauma to the vagina, or to any other sexual organ, or the anus. Only a small scratch, apparently to the peritoneal area.
>
> If you'll look at the statement that's been offered as Exhibit No. 3 for Mr. Moore, there's nothing there that indicates exactly what the circumstances were for this to have happened.
>
> I suggest to the Court that given that situation, having shown, or failed to show really an actual penetration. Notwithstanding whatever the statement may say. Because the statement itself doesn't give you enough of the information regarding the circumstances, or what may have happened or how it happened.

[2] *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602, 1612; 16 L Ed 2d 694 (1966).

> And I'd suggest that that therefore shows that there is not sufficient evidence to show, beyond a reasonable doubt, that there is a Criminal Sexual Conduct First Degree.

The trial court, which ultimately found this argument unpersuasive, responded by saying:

> All right. The Court finds that there was touching of the genital area, for the purpose of sexual gratification or arousal. And that the victim in this case is a person under the age of 14.
>
> The Court will find the defendant guilty of Criminal Sexual Conduct in the Second Degree.

The trial court did not make any additional factual findings or explain its decision in additional detail.

II. Insufficient Evidence

A. Standard Of Review

Moore first argues that the prosecution failed to present sufficient evidence to support his conviction for CSC II. We view the evidence presented in a light most favorable to the prosecution to determine whether a rational trier of fact could find the essential elements of the crime were proven beyond a reasonable doubt.[3]

B. Second-Degree Criminal Sexual Conduct

MCL 750.520c(1)(a); MSA 28.788(3)(1)(a) provides that:

> (1) [a] person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person . . . [who] is under 13 years of age.

MCL 750.520a(k); MSA 28.788(1)(k) adds to the elements of this crime by defining "sexual contact" as

> the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area 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(c) MSA 28.788(1)(c) clarifies this offense further by defining "intimate parts" as "the primary genital area, groin, inner thigh, buttock, or breast of a human being." Thus, the prosecution must show that: (1) Moore touched complainant's intimate parts, (2) the touching was done for sexual

[3] *People v Mass*, 238 Mich App 333, 335; 605 NW2d 322 (1999).

purposes or could reasonably be construed as having been done for sexual purposes, and (3) the complainant was under thirteen years of age at the time the defendant committed the offense.

Viewing the evidence in a light most favorable to the prosecutor, there was sufficient evidence of the first element when the trial court admitted into evidence Moore's statement, in which he admitted that he "slipped" his finger into the complainant's vagina. Moore does not dispute that the evidence at trial established that the complainant was "under thirteen years of age" when he committed the offense. Thus there is no question that there was sufficient evidence of the third element.

Moore, however, claims that despite this other evidence the evidence against him was deficient because it did not establish that he *intended* to touch complainant's vagina for purposes of sexual gratification. We disagree. Moore's subjective intent is "[ir]relevant to this general intent crime."[4] The prosecutor only has to demonstrate that the touching could "reasonably be construed as being for the purpose of sexual arousal or gratification" in order to satisfy the second element of the offense.[5]

This second element was, nevertheless, greatly disputed. Moore's concession that his finger "slipped" inside complainant's vagina might suggest that the touching was accidental. However, other components of Moore's statement contradict an inference of innocent conduct absent of sexual purpose. For example, Moore asked for "counseling," and he also "promise[d] not to go around [complainant] until [he got] some help," which suggest that he knew his behavior was inappropriate. These comments also negate any inference that the touching was accidental. Additionally, Moore admitted that the incident "only happened one time" but claimed that he was not the type of person who would "mess with little kids." Critically, given our review favorable to the prosecution, we believe that the trial court reasonably rejected the plain words in this statement in light of the other evidence at trial in order to conclude that Moore was motivated by sexual desire. Accordingly, when read together, Moore's statement provided sufficient evidence that he touched the complainant's vagina for the purpose of sexual arousal or gratification.

III. Insufficient Findings Of Fact And Conclusions Of Law

A. Standard Of Review

Moore also argues that the trial court's factual findings and legal conclusions were inadequate. We review a trial court's factual findings for clear error and it conclusions of law de novo.[6]

B. Analysis

MCR 6.403 requires a trial court acting as the factfinder in a criminal case to "find the facts specially, state separately its conclusions of law, and direct entry of the appropriate judgment. The

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[4] *People v Piper*, 223 Mich App 642, 650; 567 NW2d 483 (1997).

[5] *People v Lemons*, 454 Mich 234, 253; 562 NW2d 447 (1997).

[6] See *People v Powell*, 235 Mich App 557, 560; 599 NW2d 499 (1999).

court must state its findings and conclusions on the record or in a written opinion made a part of the record." This court rule incorporates[7] MCR 2.517(A)(2), which requires a trial court acting as a factfinder to make "[b]rief, definite, and pertinent findings and conclusions on the contested matters . . . without overelaboration of detail or particularization of facts." A trial court's factual findings are sufficient if it appears from the record that it was aware of the issues in the case and correctly applied the law.[8] The trial court's findings in this case covered every element of CSC II. Although brief, these facts indicate that the trial court was well-aware of the factual and legal issues in this case. We see no error here.

Affirmed.

/s/ Peter D. O'Connell
/s/ William C. Whitbeck

I concur in result only.

/s/ Michael J. Kelly

[7] *People v Legg*, 197 Mich App 131, 134, n1; 494 NW2d 797 (1992).

[8] *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995).