

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALAN L. DAVIS, SR.

Defendant-Appellant.

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UNPUBLISHED

December 26, 2000

No. 215278

Oakland Circuit Court

LC No. 98-157510-FH

Before: McDonald, P.J., and Neff and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted by a jury of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), and sentenced to a term of two to fifteen years' imprisonment. He appeals as of right. We affirm.

Defendant argues that he was deprived of a fair trial because of comments by the prosecutor that improperly injected the issue of religion into the proceeding. Because defendant did not object to the challenged remarks at trial on this basis, appellate relief is precluded absent a showing of plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999); *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000).

In this case, to the extent the issue of religion was injected into the trial, it was not done for an improper purpose, such as to attack defendant's credibility on the basis of his religious beliefs. See *People v Zysk*, 149 Mich App 452, 460-461; 386 NW2d 213 (1986); *People v Vesnaugh*, 128 Mich App 440, 444; 340 NW2d 651 (1983). A cautionary instruction could have alleviated any prejudice that may have occurred. Accordingly, we conclude that any error did not affect defendant's substantial rights and, therefore, reversal is not required.

Next, defendant claims that the evidence was insufficient to support his conviction. We disagree. In determining whether sufficient evidence has been presented to sustain a conviction, we review the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994). A conviction of second-degree CSC requires proof that the defendant intentionally touched the victim's intimate parts or intentionally touched the clothing covering the immediate area of the

victim's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification. *People v Piper*, 223 Mich App 642, 645; 567 NW2d 483 (1997).

Here, the victim testified that defendant intentionally touched her intimate area. She further testified that she knew the difference between a good touch and a bad touch, and explained what a bad touch was. According to the victim, defendant put both of his hands under her shirt and touched her breasts slowly, moving his hands from one side to the other. The victim further claimed that defendant touched her vagina later that same night. Viewed in a light most favorable to the prosecution, this testimony was sufficient for the jury to find, as it did, that defendant intentionally touched the victim and did so for a sexual purpose.

Finally, defendant raises several sentencing issues. However, because defendant has fully served his minimum two-year term, we conclude that the issues are moot. *People v Bailey (On Remand)*, 218 Mich App 645, 648; 554 NW2d 391 (1996); *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).<sup>1</sup>

Affirmed.

/s/ Gary R. McDonald  
/s/ Janet T. Neff  
/s/ E. Thomas Fitzgerald

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<sup>1</sup> Regarding defendant's claim that the trial court erred in refusing to clarify statements in the presentence report referring to an incident in which defendant allegedly beat the victim with a belt, it appears from the copy of the presentence report attached to defendant's brief that the reference to this incident has been entirely deleted. Therefore, further relief is not required.