

STATE OF MICHIGAN
COURT OF APPEALS

In re MYCHAL YHARBROUGH, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

MYCHAL YHARBROUGH,

Respondent-Appellant.

UNPUBLISHED

August 9, 2002

No. 232172

Wayne Circuit Court

LC No. 98-367822

Before: Talbot, P.J., and Cooper and D. P. Ryan*, JJ.

MEMORANDUM.

Respondent appeals by right from a plea-based adjudication of guilt to second-degree criminal sexual conduct, MCL 750.520c(1)(a). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This Court reviews the adequacy of the factual basis for a plea by examining whether the factfinder could properly convict on the facts elicited from the defendant at the plea proceeding. *People v Brownfield (After Remand)*, 216 Mich App 429, 431; 548 NW2d 248 (1996).

A factual basis to support a plea exists if an inculpatory inference can be drawn from what the defendant has admitted. This holds true even if an exculpatory inference could also be drawn and the defendant asserts that the latter is the correct inference. Even if the defendant denies an element of the crime, the court may properly accept the plea if an inculpatory inference can still be drawn from what the defendant says. [*People v Jones*, 190 Mich App 509, 511-512; 476 NW2d 646 (1991) (citations omitted).]

The elements of the crime charged are: (1) the defendant intentionally touched the intimate parts of another person or the clothing covering those parts; (2) the touching was done for sexual arousal or gratification or could reasonably be construed as having been done for such a purpose; and (3) the other person was under the age of thirteen. MCL 750.520a(c) and (l); MCL 750.520c(1)(a); CJI2d 20.2, 20.3.

* Circuit judge, sitting on the Court of Appeals by assignment.

In questioning by the court, respondent admitted that he fondled the buttocks of a twelve-year-old boy. The term “fondle” has no special legal meaning and thus the court did not require defendant to make a legal determination as to his guilt. The word is commonly understood as “to handle or touch lovingly, affectionately, or tenderly; caress.” *Random House Webster’s Unabridged Dictionary* (2d ed, 1998). While respondent contends that he did not understand the court’s question, the record reveals that he answered appropriately without expressing any confusion. The touching of another person’s buttocks in a loving, affectionate, or tender manner can, when viewed objectively, reasonably be construed as being for sexual arousal or gratification. *People v Piper*, 223 Mich App 642, 647; 567 NW2d 483 (1997). Thus, respondent’s statements were sufficient to establish a factual basis for the plea of admission.

Respondent also contends that the court improperly used leading questions to elicit a factual basis for the plea. The court rule only requires that the court establish support for a finding that the juvenile committed the offense by questioning the juvenile or by other means. MCR 5.941(C)(3)(a). While this Court has stated that “the better practice at a plea proceeding would be the use of nonleading questions,” *People v Botzen*, 151 Mich App 561, 565; 391 NW2d 410 (1986), the use of leading questions is not a basis for invalidating a plea. *Id.*; *People v Watson*, 28 Mich App 587, 588-589; 184 NW2d 476 (1970).

Affirmed.

/s/ Michael J. Talbot
/s/ Jessica R. Cooper
/s/ Daniel P. Ryan