

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAMON CASTILLO,

Defendant-Appellant.

UNPUBLISHED

May 25, 2004

No. 246728

Kalkaska Circuit Court

LC No. 02-002235-FH

Before: Whitbeck, C.J., and Griffin and Borrello, JJ.

MEMORANDUM.

Defendant was convicted by a jury of fourth-degree criminal sexual conduct (CSC IV), MCL 750.520e(1)(a) (sexual contact with victim between thirteen and sixteen). He was sentenced to six months in jail and two years' probation. This case arose when a babysitter for defendant's children accused him of slipping his hand under her shirt and touching her breast. Defendant appeals as of right. We affirm.

Defendant claims that the evidence was insufficient because the prosecution did not provide evidence to contradict defendant's testimony that the touching was not intentional and the touching could not reasonably be construed as intentional. When reviewing a claim based on insufficiency of the evidence, the evidence is reviewed de novo. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). The evidence must be viewed in the light most favorable to the prosecution to determine whether the elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399; 614 NW2d 78 (2000). "The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *Nowack, supra* at 400. Circumstantial evidence and reasonable inferences arising from the evidence can constitute the requisite proof of the elements of a crime. *Id.* The prosecution "is not obligated to disprove every reasonable theory consistent with innocence to discharge its responsibility; it need only convince the jury 'in the face of whatever contradictory evidence the defendant may provide.'" *Id.*, quoting *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995).

MCL 750.520e states that a person is guilty of CSC IV if he or she engages in sexual contact with a person between the ages of thirteen and sixteen and the actor is five or more years older than that young person. Under MCL 750.520a(n), "sexual contact" includes intentional touching of a victim's intimate parts or clothes covering those intimate parts if that intentional

touching could be reasonably construed as being for the purpose of sexual gratification. See *People v Piper*, 223 Mich App 642, 647; 567 NW2d 483 (1997).

Viewing the evidence in a light most favorable to the prosecution, the jury could have reasonably concluded that defendant's credibility was questionable and that the testimony of the prosecution witnesses was sufficient to convict defendant of CSC IV. That defendant presented a different account of the incident does not negate that there was sufficient evidence to convict. *Nowack, supra* at 400; *People v Lemmon*, 456 Mich 625, 646; 576 NW2d 129 (1998).

Affirmed.

/s/ William C. Whitbeck
/s/ Richard Allen Griffin
/s/ Stephen L. Borrello