

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SILAS ALLEN MITCHELL,

Defendant-Appellant.

UNPUBLISHED

December 16, 2004

No. 249830

Wayne Circuit Court

LC No. 02-015023-01

Before: Murphy, P.J., and White and Kelly, JJ.

PER CURIAM.

Defendant was charged with second-degree criminal sexual conduct, MCL 750.520c(1)(b)(i). Following a nonjury trial, he was convicted of attempted second-degree CSC, MCL 750.92, for which he was sentenced to three years' probation. Defendant appeals his conviction as of right, and we affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first contends that the evidence was insufficient to sustain the verdict.

A challenge to the sufficiency of the evidence in a bench trial is reviewed de novo on appeal. *People v Sherman-Huffman*, 241 Mich App 264, 265; 615 NW2d 776 (2000), aff'd 466 Mich 39; 642 NW2d 339 (2002). This Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that each element of the crime was proved beyond a reasonable doubt. *People v Harmon*, 248 Mich App 522, 524; 640 NW2d 314 (2001). Circumstantial evidence and reasonable inferences drawn therefrom are sufficient to prove the elements of a crime. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). "An appellate court will defer to the trial court's resolution of factual issues, especially where it involves the credibility of witnesses." *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

The crime as charged requires proof of five elements: (1) the defendant intentionally touched (2) the intimate parts of another person or the clothing covering those parts, (3) the touching was done for a sexual purpose or could reasonably be construed as being for a sexual purpose, (4) the other person was at least thirteen years of age but less than sixteen, and (5) the other person was a member of the defendant's household. See MCL 750.520c(1)(b)(i); CJI2d 20.2; CJI2d 20.4. At the time the defendant touched the victim, he need not actually have specifically acted with the purpose of deriving sexual arousal or gratification. *People v Piper*,

223 Mich App 642, 646-647; 567 NW2d 483 (1997). It is sufficient that his conduct, when viewed objectively, could reasonably be construed as being for such a purpose. *Id.* At 647. The victim's testimony need not be corroborated. MCL 750.520h.

The victim testified that she and defendant were members of the same household. One day, when she was fourteen, she found a note from defendant directing her to wake him up when she got home from school. When she did so, he had her lay down on the bed with him. Then he put his arms around her and cupped her breasts with his hands. Given the circumstances under which the touching occurred, the touching could be reasonably construed as being for a sexual purpose or for sexual arousal or gratification. Such evidence, when taken in a light most favorable to the prosecution, was sufficient to prove each element of the crime charged beyond a reasonable doubt. Issues concerning credibility were for the trial court to decide, not this Court. Although the evidence was sufficient to prove a completed crime, defendant could properly be convicted of an attempt. *People v Jones*, 443 Mich 88, 103; 504 NW2d 158 (1993).

Defendant next contends that he was denied a fair trial due to the introduction of inadmissible hearsay and other acts evidence. Whether the issue is one of admission of evidence or prosecutorial misconduct, it has not been preserved because defendant did not object below. *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003); *People v Spanke*, 254 Mich App 642, 644; 658 NW2d 504 (2003). *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004); *People v James Green*, 260 Mich App 392, 409-410; 677 NW2d 363 (2004). Also, the issue has not been properly presented to the Court because defendant has not identified by citation to the record the specific testimony of each witness he contends was inadmissible. MCR 7.212(C)(7); *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 424; 576 NW2d 667 (1998). Regardless, our review of what little substance and argument that can be ascertained from reading defendant's brief leads us to conclude that there was no plain error affecting defendant's substantial rights. *Ackerman*, *supra* at 448.

Affirmed.

/s/ William B. Murphy
/s/ Helene N. White
/s/ Kirsten Frank Kelly