

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

ANDRE FARAH BOND,

Defendant-Appellee.

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UNPUBLISHED

October 16, 2007

No. 267679

Washtenaw Circuit Court

LC No. 05-000093-FH

Before: Talbot, P.J., and Cavanagh and Meter, JJ.

CAVANAGH, J. (*dissenting*).

I respectfully dissent. I would affirm the trial court's order that vacated the CSC II jury conviction and entered a CSC IV conviction. The evidence, even when viewed in a light most favorable to the prosecution, would not lead a rational trier of fact to find the essential elements of CSC II proved beyond a reasonable doubt. See *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

In particular, the prosecution had to establish that defendant was in a position of authority over the victim and that he used that authority to coerce the victim to submit to sexual contact. See MCL 750.520c(1)(b)(iii); *People v Usman*, 428 Mich 902; 406 NW2d 824 (1987). Although I agree with the majority that defendant was in a position of authority over the victim, I disagree that he used that authority to coerce the victim to submit to sexual contact. The facts as established at trial included that defendant walked into a room that he claimed was his office and called for the victim to "come here." When she entered the room defendant grabbed her, pulled her close, grabbed her buttocks, "grinded" on her, and then tried to unbutton her pants. As the trial court noted, the victim testified that (1) she was shocked when the act occurred, (2) she never consented to the touching, and (3) as soon as she could, she pushed defendant away and left the area.

Even if coercion was proved, which I question, the victim did not "submit to" the sexual contact. The definition of "submit" includes "to give over or yield to the power or authority of another," "to yield oneself to the power or authority of another," and "to allow oneself to be subjected to some kind of treatment." Random House Webster's College Dictionary (1997). In other words, there is an element of volition; the phrase "to submit to" implies that one had a choice. In this case, the assault happened so unexpectedly and quickly that the victim could not immediately or instantaneously respond. The victim cannot reasonably be said to have yielded to, or allowed herself to be subjected to, defendant's sexual contact because she was concerned

about his authority over her. Any time lapse between defendant's sexual contact and the victim's rejection of it was because of the unexpected and quick nature of the assault, not because of the victim's choice.

The majority's conclusion that the victim submitted to defendant's sexual contact with her buttocks, but only rejected defendant's sexual contact when he attempted to unbutton her pants is contrary to the victim's own testimony. The victim very clearly testified that she reacted to, and rejected, the assault as soon as she was able. As repulsive as defendant's purported behavior was, it was not the behavior proscribed by MCL 750.520c(1)(b)(iii).

I would affirm.

/s/ Mark J. Cavanagh