

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY ALAN BASSETT,

Defendant-Appellant.

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UNPUBLISHED

November 20, 2007

No. 271694

Kent Circuit Court

LC No. 05-010165-FH

Before: Talbot, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for first-degree home invasion, MCL 750.110a(2), and assault with intent to commit criminal sexual conduct involving sexual penetration (AWICSC), MCL 750.520g(1). The trial court sentenced defendant as a third habitual offender, MCL 769.11, to 9 to 40 years in prison for the home invasion conviction and 9 to 20 years in prison for the AWICSC conviction. We affirm.

**I. Basic Facts and Procedure**

The victim was home alone on September 20, 2005, when she heard the front door close and discovered that defendant, her daughter's father, was in the house. Defendant grabbed the victim and began to rub or fondle her by trying to put his hand up her shirt and down her pants. Although she told defendant "to knock it off" and instructed him to leave, he picked her up underneath her arms, pushed her against the wall, and attempted to put her legs around his hips. Defendant carried the victim to their daughter's bedroom, placed her on the bed, held her down by her wrists, and spread her legs apart. Defendant placed himself, on his knees, in between the victim's legs and tried to kiss the victim and feel her "private parts." The victim also thought defendant was trying to take his pants off, and she told him to stop. Defendant, however, repeatedly replied that the victim knew that she wanted it and that he was "not going to." Defendant touched the victim's breasts and buttocks, and he tried to touch her vagina. At some point, the victim noticed that a crack pipe had fallen from defendant's pocket onto the floor, and she believed that he had been using crack cocaine that day. Defendant suddenly stopped, and the victim did not know why; defendant left the house without saying anything.

**II. Sufficiency of the Evidence**

Defendant claims that the evidence was insufficient to support his convictions. When reviewing the sufficiency of the evidence to sustain a conviction, we view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hunter*, 466 Mich 1, 6; 643 NW2d 218 (2002).

#### A. First-Degree Home Invasion

Defendant argues that there was insufficient evidence to sustain his first-degree home invasion conviction because he lacked the intent to commit a felony when he entered the victim's home. According to defendant, the evidence merely establishes that he entered the victim's house with the intent to speak to her about their child support arrangement. We disagree. By the plain language of MCL 750.110a(2), a person is guilty of first-degree home invasion if, after he breaks and enters a dwelling, he commits a felony, larceny, or assault while present in the dwelling. *People v Sands*, 261 Mich App 158, 162; 680 NW2d 500 (2004). Notably, defendant does not argue that he did not commit an assault while present in the victim's house. The evidence shows that defendant entered the victim's house without permission and assaulted her with the intent to commit criminal sexual conduct, which is felony. MCL 750.520g(1). Defendant's conviction is therefore supported by sufficient evidence.

#### B. AWICSC

Defendant also claims that his AWICSC conviction is not supported by sufficient evidence because there was no evidence that, when he committed an unwanted touching of the victim, he harbored the specific intent to commit a sexual penetration. We disagree. The two elements of AWICSC are an assault and an intent to commit criminal sexual conduct involving sexual penetration. *People v Starks*, 473 Mich 227, 234; 701 NW2d 136 (2005). Sexual penetration is defined as "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required." MCL 750.520a(p).

A defendant's intent may be proven by circumstantial evidence, including the defendant's words and conduct. *People v Hawkins*, 245 Mich App 439, 458; 628 NW2d 105 (2001). Because of the difficulty of proving a person's state of mind, minimal circumstantial evidence is sufficient. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). In the present case, the victim testified that, after defendant picked her up by the arms and tried to wrap her legs around his hips, he carried her to their daughter's bedroom. He placed her on the bed and spread her legs apart. Defendant positioned himself on his knees between the victim's legs and proceeded to attempt to kiss her and feel her private parts, including her vagina. In addition, the victim testified that she believed defendant attempted to take off his pants.

According to defendant, he did not have the intent to commit criminal sexual conduct involving sexual penetration because, when the victim told him to stop, he repeatedly said, "You know I'm not going to." Defendant interprets his remarks to mean that he was not going to engage in sexual intercourse with the victim. However, given that defendant made his remarks after the victim told him to stop, an equally plausible interpretation of the remarks is that defendant was not going to stop, especially given defendant's comments that the victim knew she wanted it. Indeed, this was how the victim interpreted defendant's remarks. Viewing the

above evidence in a light most favorable to the prosecution, *Hunter, supra* at 6, which includes drawing all inferences in favor of the jury verdict, *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000), a reasonable trier of fact could have found that defendant, when he committed an unwanted touching of the victim, intended to engage in criminal sexual conduct involving sexual penetration. Defendant's conviction for AWICSC is therefore supported by sufficient evidence.

### III. Jury Instructions

Defendant asserts that, after the jury requested further instructions on the intent element of AWICSC, the trial court, departing from the standard criminal jury instructions, offered an "example" of how to determine a person's intent that was designed to achieve a guilty verdict. However, an affirmative statement by counsel that she has no objections to jury instructions constitutes an express approval of the instructions, and such approval waives a claim of instructional error on appeal. *People v Matuszak*, 263 Mich App 42, 57; 687 NW2d 342 (2004). After the trial court reinstructed the jury on the issue of intent, it asked for comments from the prosecution and defense counsel. Defense counsel stated she had "[n]o problem" with the trial court's instruments. Accordingly, defendant waived any claim of instructional error. *Id.*

Affirmed.

/s/ Michael J. Talbot  
/s/ E. Thomas Fitzgerald  
/s/ Kirsten Frank Kelly