

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN WICKMAN,

Defendant-Appellant.

UNPUBLISHED

May 1, 2008

No. 276598

Oakland Circuit Court

LC No. 2006-206877-FH

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions of three counts of second-degree criminal sexual conduct, MCL 750.520c(1)(a). Defendant was sentenced to three concurrent terms of 48 months to 15 years' imprisonment with credit for 34 days. We affirm.

Defendant contends that the prosecutor presented insufficient evidence to sustain his convictions. In the alternative, defendant argues that the trial court erred in denying his motion for directed verdict.

Specifically, defendant argues that none of the alleged incidents were intentional, done for a sexual purpose, nor could they be reasonably be construed as having been done for a sexual purpose. Defendant notes that he, the victim, the victim's mother, and a friend of the victim's mother are deaf. Therefore, defendant asserts that given the difficulty in interpreting the actions and conversations of a deaf person, his actions could have easily been misinterpreted by a detective that interviewed him and by the deaf friend of the victim's mother.

In reviewing the sufficiency of the evidence, this Court views the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). We are mindful that it is the jury's function to assess the credibility of witnesses and to weigh the evidence. *Id.* at 514-515. The standard of review for the directed verdict motion is substantially the same. We review the decision on the motion de novo "and consider the evidence presented by the prosecution in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Mayhew*, 236 Mich App 112, 124; 600 NW2d 370 (1999). Circumstantial evidence, and reasonable inferences drawn from that evidence, may be sufficient to sustain a

conviction. *People v Plummer*, 229 Mich App 293, 299; 581 NW2d 753 (1998). And, the victim's testimony alone may be sufficient. MCL 750.520h.

MCL 750.520c(1)(a) provides that "[a] person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and . . . [t]hat other person is under 13 years of age." "'Sexual contact' includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner" MCL 750.520a(n). The clear language of the statute provides a reasonable person standard to guide a jury's determination of the purpose of the contact. *People v Piper*, 223 Mich App 642, 647; 567 NW2d 483 (1997). The jury is limited to determining whether the defined conduct, when viewed objectively, could reasonably be for a sexual purpose.

The prosecution's theory of the case was that defendant intentionally touched the victim's breasts or the clothing covering that area, defendant intentionally made the victim touch his genital area or the clothing covering that area, and that defendant intentionally touched the victim's genital area or the clothing covering that area. The prosecution had to prove that defendant did each of these things for a sexual purpose or that the touching could reasonably be construed as having been done for sexual purposes. MCL 750.520a(n). Further, the victim had to be less than 13 years of age at the time of the alleged acts. MCL 750.520c(1)(a).

At trial, there was testimony that defendant engaged in inappropriate sexual conduct with the victim on several occasions. It is undisputed that the victim was nine years old when the alleged inappropriate sexual conduct took place.

There was evidence presented at trial that while the victim was sitting in a chair in the living room, defendant sat next to her, put his arm around her neck, and put his right hand on her breast. The victim felt uncomfortable. This evidence was sufficient to prove beyond a reasonable doubt that defendant intentionally touched the victim's breast or clothing covering that area.

The testimony at trial also indicated that on another occasion, the victim was sitting on the couch in the living room and defendant pulled the victim's foot over and put it in his lap. The victim testified that she could feel "it" a little bit. She testified that her foot touched defendant's private area and that "it" was hard. This evidence was sufficient to prove beyond a reasonable doubt that defendant intentionally made the victim touch his genital area or the clothing covering that area.

Finally, there was evidence that defendant intentionally touched the victim's genital area or clothing covering that area. Defendant was using the computer. He was on the website "Perfect Match." He wanted the victim to sit on his lap. The victim testified that she sat on his lap in his private area. She felt his private part. "It" was hard and she felt uncomfortable.

Other testimony revealed that, on one occasion, defendant forced the victim to sit on his lap while they were riding in their van going on an outing. The victim testified that she felt something hard in his private area and that "it" felt funny and made her feel uncomfortable. The

victim's mother and the mother's friend acknowledged that defendant had the victim sit on his lap in the van.

Another incident occurred in the kitchen of the family home. Defendant picked the victim up and bounced her up and down. His hands were on her buttocks and her legs were wrapped around his waist, so she was on his abdomen. She told him to stop, but he ignored her. The bouncing lasted for 1 or 2 minutes. The victim testified that this made her feel uncomfortable. A friend of the victim's mother saw the incident in the kitchen as well.

On appeal, defendant maintains that his actions and statements were misinterpreted, and that there was insufficient evidence to support that the incidents at issue were intentionally done, for a sexual purpose. We disagree. Viewed in a light most favorable to the prosecution, a reasonable inference can be drawn from the evidence that defendant acted for purposes of sexual gratification or with a sexual purpose. There was evidence that defendant had sexual thoughts about young girls, and thought about children in the nude, including his daughter. One of the acts testified about at trial revealed that defendant made the victim sit on his lap while reviewing a computer site entitled "Perfect Match." Other evidence further revealed that defendant spoke inappropriately to the victim about finding him a woman to date and about her older brother's "jacking off." This evidence was sufficient to prove beyond a reasonable doubt that defendant's intentional conduct toward the victim had a sexual purpose.

Because there was sufficient evidence for a reasonable trier of fact to conclude beyond a reasonable doubt that defendant committed three counts of second-degree criminal sexual conduct, the trial court correctly denied defendant's motion for a directed verdict.

We affirm.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey