

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN DAVID GREER,

Defendant-Appellant.

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UNPUBLISHED

February 5, 2009

No. 278746

St. Clair Circuit Court

LC No. 06-002887-FC

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of second-degree criminal sexual conduct (CSC-II) [victim under 13 years of age].<sup>1</sup> MCL 750.520c(1)(a). Defendant was sentenced as a second habitual offender, MCL 769.10, to 5 to 22½ years' imprisonment. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Factual/Procedural History

Defendant is charged with sexually molesting one of two male siblings entrusted to his care. Although the exact date of the incident was undetermined, the defendant and witnesses concurred that defendant only took care of the victim and his brother on one occasion. At the time of the incident, the victim was approximately eight or nine years of age, and his brother was thirteen years old. In addition, two minor females who are not related to the victim, were also in the home being supervised by defendant, but were not physically present in the area of the alleged events.

Before the molestation occurred, the victim and his brother spent time with defendant watching television, playing video games and "wrestling" in the living room. The victim reported that defendant told him he had a secret to share and accompanied the child into a bathroom. While in the bathroom, defendant allegedly removed all of his own clothing and the victim's. The victim asserted defendant then touched his penis and made the child touch defendant's penis. The victim further alleged that defendant made him turn around and then sexually penetrated him by placing his penis in the victim's anus. Although the victim was

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<sup>1</sup> Defendant was acquitted of two counts of first-degree criminal sexual conduct. MCL 750.520b.

uncertain regarding the depth of penetration, he indicated it was sufficient to cause him pain and discomfort. The victim estimated that only ten or 15 minutes elapsed for these events to occur. The victim asserted that he cried during these events and after, but did not immediately report the incident because defendant indicated he would lose his parents forever if he told anyone.

Both the victim's older brother and his mother indicated that the victim appeared to be upset and crying when they next observed him. The victim explained to his mother that he was distressed because defendant had injured his brother while "wrestling," but the older brother denied incurring any such injury. The victim's brother confirmed that defendant left the room with the minor child and indicated he observed a change in the younger child's behavior upon their return to the living room area. While the older brother was uncertain regarding the amount of time elapsed during their absence, he acknowledged he was more focused on the video game he was playing than on the behavior or actions of those surrounding him. Defendant denied that any of the alleged events occurred.

## II. Standard of Review

On appeal, defendant claims the evidence was insufficient to convict him of second-degree criminal sexual conduct. A challenge to the sufficiency of the evidence is reviewed by this Court de novo. *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005); *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). The Court is required to "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 Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000) (citation omitted). However, "[t]his Court will not interfere with the jury's role of determining the weight of the evidence or deciding the credibility of the witnesses." *People v Fletcher*, 260 Mich App 531, 561; 679 NW2d 127 (2004). Further, "[e]ven in a case relying on circumstantial evidence, the prosecution need not negate every reasonable theory consistent with the defendant's innocence, but need merely introduce evidence sufficient to convince a reasonable jury in the fact of whatever contradictory evidence the defendant may provide." *People v Hardiman*, 466 Mich 417, 423-424; 646 NW2d 158 (2002), quoting *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995).

## III. Analysis

The elements of second-degree criminal sexual conduct are: (a) that defendant engaged in sexual contact with another person and (b) that the other person was under the age of 13. MCL 750.520c(1)(a); *People v Elston*, 462 Mich 751, 774; 614 NW2d 595 (2000). Our Legislature has defined "sexual contact" as "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(q)<sup>2</sup>.

There is no dispute that the victim meets the requisite age criteria of MCL 750.520c(1)(a) because he was only eight or nine years of age at the time of the alleged events. In addition, the prosecution introduced evidence that defendant intentionally touched the victim’s “intimate parts.” MCL 750.520a(q); MCL 750 520a(e). The victim testified in detail how defendant lured him into the bathroom and removed both his and the victim’s clothes and then proceeded to touch the victim’s penis and forced the victim to touch defendant’s penis. According to the victim, defendant “made me use my mouth on his [penis]” and “[t]hen he put his mouth on mine.” The victim also alleged that defendant attempted to anally penetrate him. The prosecutor also presented testimony and circumstantial evidence to corroborate the victim’s allegations. The victim’s older brother testified that defendant and the victim left the living room together for at least a few minutes. Although the brother was not a witness to the sexual assault, his testimony established that a sufficient opportunity was presented for defendant to engage in the events alleged by the victim to have transpired. Further, the boys’ mother testified, and the older brother concurred, that the victim was distraught and teary-eyed later in the day, after having been in defendant’s care.

We are also satisfied that the prosecutor proved sexual contact, which requires a demonstration that defendant engaged in an “intentional touching” of the victim’s intimate parts which can “reasonably be construed as being for the purpose of sexual arousal or gratification.” MCL 750.520a(q). Because the defendant, an unrelated male, accompanied an eight- or nine-year-old to the bathroom and removed both their clothing, leads to the inference that defendant did not mistakenly or inadvertently touch the victim. Further the victim clearly indicated that defendant touched his intimate body parts, and had the victim touch defendant, in such a manner that the jury could infer that defendant’s actions were for the purpose of sexual gratification. This is especially so in light of the fact that defendant cautioned the victim not to tell anyone of the events that transpired in the bathroom.

Affirmed.

/s/ Michael J. Talbot  
/s/ Richard A. Bandstra  
/s/ Elizabeth L. Gleicher

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<sup>2</sup> For purposes of this opinion, the subsections referenced are consistent with the recent amendment of MCL 750.520a by 2007 PA 163, effective July 1, 2008.