

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN ALLEN KUIT,

Defendant-Appellant.

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UNPUBLISHED

May 5, 2009

No. 284018

Kent Circuit Court

LC No. 07-006476-FH

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

Defendant appeals as of right from his jury conviction of assault with intent to commit criminal sexual conduct in the second degree, MCL 750.520g(2)<sup>1</sup>. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant's sole argument on appeal is that the evidence presented at trial was insufficient to convict him. When reviewing the sufficiency of the evidence in a criminal case, we view the evidence de novo in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005); *People v Osantowski*, 274 Mich App 593, 612-613; 736 NW2d 289 (2007), rev'd in part on other grounds 481 Mich 103 (2008).

The elements of assault with intent to commit criminal sexual conduct in the second degree are "an assault, involving the use of force or coercion, with specific intent to touch the victim's genital area, groin, inner thigh, buttock, breast, or clothing covering those areas, for the purpose of sexual arousal or sexual gratification." *People v Evans*, 173 Mich App 631, 634; 434 NW2d 452 (1988).

"It is for the trier of fact, not the appellate court, to determine what inferences may fairly be drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). Questions of credibility and

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<sup>1</sup> The jury acquitted defendant of indecent exposure, MCL 750.335a, and assault and battery, MCL 750.81.

intent should be left to the trier of fact to resolve. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). Because proving an actor's state of mind is difficult, minimal circumstantial evidence is sufficient. *People v McGhee*, 268 Mich App 600, 623; 709 NW2d 595 (2006). We must "draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

The facts produced at trial were as follows. A police officer found defendant and complainant, a 38-year-old woman with cerebral palsy, embracing and kissing near a van in a parking lot. The officer testified that defendant appeared nervous, and that defendant admitted kissing complainant and grabbing her buttocks. The officer escorted complainant home, and defendant was allowed to leave in the van. A nurse at the YWCA testified that complainant told her that defendant had pushed her against the van and kissed her, tried to have sex with her, tried to put his hands down her pants, took his pants down, and exposed his penis. The nurse testified that complainant described defendant's actions as an attempt to fondle her breasts and to digitally penetrate her. A detective testified that defendant told her that he might have touched complainant's buttocks, and that kissing complainant had excited him to the point that he put both his hands on her buttocks.

Complainant testified that defendant pushed her against the van and kissed her, put his hand near her hip area and tried to pull her pants down, and exposed his penis. However, defendant testified that he hugged and kissed complainant to reassure her that he was not angry with her over an unrelated incident. Defendant testified that he did not believe that this was against the complainant's will because she pulled him close to her. Defendant denied that he admitted to the officer that he grabbed complainant's buttocks, but did testify that any contact between his hand and the complainant's buttocks was "totally coincidental," and that any conduct "had nothing to do with trying to sexually feel her."

We hold that the prosecution presented sufficient evidence to prove to a rational jury beyond a reasonable doubt that defendant committed an assault with intent to commit criminal sexual conduct in the second degree. In viewing the evidence in a light most favorable to the prosecution, *Tombs supra* at 459; *Osantowski, supra* at 612-613, and resolving all conflicts in the prosecution's favor, we have the following basic facts: defendant pushed complainant against the van, defendant kissed complainant, and defendant's hand came in contact with complainant's buttocks.

We do not interfere with the factfinder's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007). By believing the testimony that defendant pushed complainant against the van, the jury could have found that this was an assault accomplished with force. By believing the testimony that defendant grabbed complainant's buttocks and that defendant told the detective that kissing complainant had excited him to the point of placing both hands on complainant's buttocks, the jury could have found that defendant intended to grab complainant's buttocks either for sexual arousal or sexual gratification. These are reasonable inferences because questions of credibility and intent are to be resolved by the trier of fact. *Avant, supra* at 506. Even without hearing testimony that defendant admitted that kissing complainant excited him, the jury could have reached the same conclusion because proving an actor's state of mind is difficult and minimal circumstantial evidence is sufficient. *McGhee, supra* at 623.

The evidence adduced at trial was sufficient for the jury to find defendant guilty beyond a reasonable doubt of assault with intent to commit criminal sexual conduct in the second degree.

Affirmed.

/s/ David H. Sawyer

/s/ Christopher M. Murray

/s/ Cynthia Diane Stephens