STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 18, 2010
v	No. 288388 Wayne Circuit Court
JOEY LYNN FIELDS, Defendant-Appellant.	LC No. 08-006187-FH

Before: Sawyer, P.J., and Saad and Shapiro, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial conviction of accosting, enticing, or soliciting a minor for an immoral purpose, MCL 750.145a. We affirm.

Defendant first argues on appeal that there was insufficient evidence to support his conviction because the elements of the statute were not met.

> "[W]e review a challenge to the sufficiency of the evidence in a bench trial de novo and in a light most favorable to the prosecution to determine whether the trial court could have found that the essential elements of the crime were proved beyond a reasonable doubt." All conflicts with regard to the evidence must be resolved in favor of the prosecution. Circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime. [*People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005) (citations omitted).]

Based on our review of the record, we conclude that the prosecution presented sufficient evidence at trial for the trial court to conclude that defendant accosted, enticed, or solicited the thirteen-year-old victim when defendant, in the middle of the night and wearing only boxer shorts, woke the victim, asked her to "come over here" and do him a favor, showed the victim a $20 bill and offered her money, kneeled next to her and asked whether she "wanted to touch a real man," asked her if she was sure that she did not want to touch a real man, asked her if she had ever touched a real man before, and touched her thighs. These actions, statements, and questions by defendant show that defendant confronted and touched the victim, sought to influence her, and tempted her with money and the request for a favor. Further, it is undisputed that the victim was less than 16 years of age. Finally, based on the evidence and drawing reasonable inferences from the evidence, a rational fact finder could find beyond a reasonable

doubt that defendant had the requisite intent. Defendant appeared to be seeking for her to perform a sexual favor. Defendant touched the victim's thigh, wore nothing but boxer shorts, asked for a favor, inquired about her experience in touching "a real man," and asked the victim if she wanted to touch "a real man." His conduct was purposely designed to persuade or bring about immoral or illegal behavior. Therefore, the evidence shows that defendant intended to induce the victim to commit an immoral act, to submit to an act of sexual intercourse or an act of gross indecency, or to any other act of depravity or delinquency. MCL 750.145a.

Defendant also argues on appeal that there was not sufficient evidence to support his conviction because the testimony of the witnesses conflicted. We find no inherent conflict. Regardless, none of defendant's arguments merit reversal on the basis of insufficient evidence. All of defendant's arguments relate to the judging of the credibility of witnesses. We do not make credibility determinations when reviewing the sufficiency of the evidence. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999). We view the evidence in the light most favorable to the prosecution, *People v Hardiman*, 466 Mich 417, 421; 646 NW2d 158 (2002), and must "draw all reasonable inferences and make credibility choices in support of the jury verdict," not in support of defendant. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

Defendant also argues that the statute is unconstitutionally vague as it was applied to him because the trial court did not specify in its decision how defendant met the elements of the crime set forth in the statute. We review de novo challenges "to the constitutionality of a statute under the void-for-vagueness doctrine." *People v Beam*, 244 Mich App 103, 105; 624 NW2d 764 (2000). However, unpreserved claims of constitutional error are reviewed for plain error. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

> A penal statute is unconstitutionally vague if (1) it does not provide fair notice of the conduct proscribed, (2) it confers on the trier of fact unstructured and unlimited discretion to determine whether an offense has been committed, or (3) its coverage is overly broad and impinges on First Amendment Freedoms. [*People v Vronko*, 228 Mich App 649, 652; 579 NW2d 138 (1998).]

Because defendant has not asserted any First Amendment of the United States Constitution, US Const, Am I, violations,

> the constitutionality of the statute in question must be examined in light of the particular facts at hand without concern for the hypothetical rights of others. The proper inquiry is not whether the statute may be susceptible to impermissible interpretations, but whether the statute is vague as applied to the conduct allegedly proscribed in this case. [*Id.* (citations omitted).]

"'To determine whether a statute is void for vagueness, a court examines the entire text of the statute and gives the statute's words their ordinary meanings.'" *People v Pierce*, 272 Mich App 394, 398; 725 NW2d 691 (2006), quoting *People v Piper*, 223 Mich App 642, 646; 567 NW2d 483 (1997). "[A] criminal defendant may not defend on the basis that the charging statute is unconstitutionally vague or overbroad where the defendant's conduct is fairly within the constitutional scope of the statute." *People v Rogers*, 249 Mich App 77, 95; 641 NW2d 595 (2001).

In this case, the trial court clearly indicated that there was proof beyond a reasonable doubt that defendant accosted, enticed or solicited the victim *to do something* immoral, indecent, or for sexual purposes. Although the trial court did not use the word intent when finding defendant guilty, it found that defendant was accosting, enticing or soliciting the victim "for possible or immoral or sexual purpose." This statement reveals a finding of intent. "Intent is the purpose to use a particular means to effect [a certain] result." *People v Hoffman*, 225 Mich App 103, 106; 570 NW2d 146 (1997) (quotation marks and citations omitted). Moreover, defendant's statements, questions, and actions in this case fall squarely within the conduct proscribed in the statute as set forth above. *Pierce*, 272 Mich App at 398. Consequently, defendant's constitutional challenge fails as applied to the facts of this case. *Rogers*, 249 Mich App at 95.

Affirmed.

/s/ David H. Sawyer
/s/ Henry William Saad
/s/ Douglas B. Shapiro