

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD LEE LANE,

Defendant-Appellant.

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UNPUBLISHED

July 14, 1998

No. 198316

St. Joseph Circuit

LC No. 95-008103-FH

Before: Corrigan, C.J., and Hoekstra and Young, Jr., JJ.

PER CURIAM.

Defendant appeals by right his conviction by jury of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). The trial court enhanced defendant's sentence as an habitual offender, third offense, MCL 769.11(1)(a); MSA 28.1083(11)(1)(a), to a term of imprisonment of ten to thirty years. We affirm.

The charges against defendant arose from incidents that occurred during a weekend visit between him and his five-year-old son. Defendant had regular contact and visitation with his son and daughter. After a weekend visit, the victim returned home and told his mother that defendant had touched him with his penis on two separate occasions during this visit. The allegations in Count I involved an incident occurring in the victim's bedroom at defendant's mother's house. Count II involved an allegation that defendant and the victim undressed and then the victim sat on defendant's lap while steering defendant's car. The jury convicted the defendant of Count II but acquitted him of Count I.

Defendant first argues that the trial court should have excluded as inadmissible hearsay the victim's mother's testimony about what the victim told her regarding defendant's actions. Defendant further argues that absent this testimony, the evidence regarding defendant's criminal sexual conduct in the car was insufficient to support his conviction. Because defendant did not preserve the issue by objecting below, we will not review this hearsay claim absent manifest injustice. *People v Stimage*, 202 Mich App 28; 507 NW2d 778 (1993). No manifest injustice exists in this case because the

testimony of the victim's mother clearly falls within the tender years exception to the hearsay rule, MRE 803A.

MRE 803A provides, in relevant part, that a child's extrajudicial statement describing an incident involving sexual abuse is admissible to the extent that it corroborates the child's testimony during the same proceeding, provided that:

- (1) the declarant was under the age of ten when the statement was made;
- (2) the statement is shown to have been spontaneous and without indication of manufacture;
- (3) either the declarant made the statement immediately after the incident or any delay is excusable as having been caused by fear or other equally effective circumstance; and
- (4) the statement is introduced through the testimony of someone other than the declarant.

The mother's testimony meets all these criteria. The victim told her he had a secret on his return from a weekend visit with defendant in June 1995. He revealed that the defendant had rubbed his penis on his head and recounted other details of the weekend, including that he had sat on defendant's lap while driving the car, but that neither of them had been clothed while doing this. The victim was under the age of ten and told his mother about his father's behavior within hours of returning home. See *People v Dunham*, 220 Mich App 268; 559 NW2d 360 (1996). The delay of a few hours was excusable in light of the victim's fear of telling a secret. The victim initiated the conversation in which he told his mother that he had a secret and, thus, it was spontaneous and without any indication of manufacture. Finally, the statement was introduced by the victim's mother, who is obviously someone other than the declarant.

Defendant further argues that the trial court erred in admitting the evidence because the mother testified subsequent to the victim. We disagree. MRE 803A requires only that the evidence corroborate testimony given by the declarant in the same proceeding. Corroborating evidence confirms or strengthens the testimony of another witness. *Schwartz v Davis Mfg Co*, 32 Mich App 451, 456; 189 NW2d 1 (1971). Under MRE 611(a), the trial court has the discretion to control the order of witnesses and the presentation of evidence. In this case, the trial court did not abuse its discretion in allowing the mother to testify before the child because the child testified during the trial, thereby satisfying the MRE 803A criteria.

Defendant also asserts that the prosecution did not satisfy the notice requirement of MRE 803A. As in *Dunham, supra*, in which this Court found harmless error for failure to furnish notice under MRE 803A, defense counsel was well aware of the likely introduction of such testimony at trial. Though no preliminary examination was held, the felony complaint and supporting affidavit clearly indicated that the victim's mother was the complaining witness in this matter and that the victim had

initially reported the abuse to her. As such, defendant was not prejudiced by the prosecution's failure to furnish notice under MRE 803A.

Defendant next argues that the evidence was insufficient to support a conviction on Count II, the incident that occurred in the car. We disagree. The prosecution must introduce sufficient evidence from which a rational trier of fact could conclude that the defendant is guilty beyond a reasonable doubt. *People v Fisher*, 193 Mich App 284, 287; 483 NW2d 452 (1992). In reviewing the sufficiency of the evidence, this Court views the evidence 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 were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Defendant contends that the prosecution presented no evidence of his intent to commit second-degree criminal sexual conduct. The offense of second-degree criminal sexual conduct consists of a person engaging in sexual contact with another person who is under 13 years of age. MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). "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 touching can reasonably be construed as being for the purpose of sexual arousal or gratification." MCL 750.520a(k); MSA 28.788(1)(k). Second-degree criminal sexual contact is a general intent crime. *People v Piper*, 223 Mich App 642, 646; 567 NW2d 483 (1997). The statute requires proof only of an intentional touching, not proof of the defendant's actual purpose for the intentional touching. *Id.* The prosecution, however, must prove that the intentional touch could "reasonably be construed as being for [a] sexual purpose." *Id.*

Sufficient evidence existed in this case to support a conviction. The victim testified that he was sitting on defendant's lap while defendant was driving, and that defendant let him steer the car. Defendant had told him to remove his clothes and defendant was also naked. The victim stated that the defendant's penis touched him between his legs during this encounter. The main issue is the credibility of these witnesses, which is a question for the jury. *People v Lemmon*, 456 Mich 625; 576 NW2d 129 (1998).

We likewise reject defendant's contention that the prosecution failed to establish venue. The prosecution has the burden of proving appropriate venue. *People v Fisher*, 220 Mich App 133, 145; 559 NW2d 318 (1996). The victim's mother inferred from his description that these events occurred at either one of two places that she knew defendant frequented in St. Joseph County. Defendant admitted that the victim steered his car in one of the places identified by the victim's mother, although he denied that either of them had been unclothed. This circumstantial evidence was sufficient to establish proper venue.

Defendant next argues that the trial court erred in denying his motion for a directed verdict regarding Count I. When ruling on a motion for a directed verdict, this Court considers the evidence presented by the prosecutor in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the prosecution has proven the essential elements of the crime beyond a reasonable doubt. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993); *People v*

*Daniels*, 192 Mich App 658, 665; 482 NW2d 176 (1992). This Court may not weigh the evidence or the credibility of the witnesses, regardless of inconsistencies or vagueness. *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997). Rather, questions regarding the credibility of witnesses are left to the trier of fact. *People v Velasquez*, 189 Mich App 14, 16; 472 NW2d 289 (1991).

In this case, the prosecution introduced evidence that defendant intentionally touched the victim's head with his penis. An act such as this could reasonably be construed as being for a sexual purpose. The victim explained that during a tickling game, the defendant placed his penis on his hair. This testimony alone, without any corroboration, is sufficient to withstand a motion for a directed verdict. Neither party suggests that this touching was in some way inadvertent or accidental. The jury could infer from the evidence that defendant's actions were for the purpose of sexual gratification, especially in light of the fact that defendant told the victim to keep his conduct a secret. Similarly, the victim's characterization that it was "just a game" does not trivialize these events, and defense counsel's attempt to minimize these acts is equally unpersuasive.

Finally, defendant argues that the ten to thirty year sentence was disproportionate to the seriousness of the offense. Provided permissible factors are considered, our review is limited to whether the sentencing court abused its discretion. *People v Hansford*, 454 Mich 320, 323-324; 562 NW2d 460 (1997). A sentencing court abuses its discretion when the sentence imposed violates the principle of proportionality. A sentence must be proportionate to the seriousness of the offense and the offender. *People v Milbourn*, 435 Mich 630, 635-636, 654; 461 NW2d 1 (1990). Defendant is an habitual offender. The trial court determined on the basis of the seriousness of the crime that a lengthy incarceration was necessary to protect society. The trial court properly viewed this punishment as just, considering the dangerousness of defendant and the long-term damage to the victim. In light of the serious crime, defendant's criminal history, and poor prospects for rehabilitation, the sentence is not disproportionate.

Affirmed.

/s/ Maura D. Corrigan  
/s/ Joel P. Hoekstra  
/s/ Robert P. Young, Jr.