STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 23, 2001
v	No. 219251 Kent Circuit Court
DENNIS LEE KEUR, Defendant-Appellant.	LC No. 98-002655-FH

Before: Wilder, P.J., and Hood and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction for assault with intent to commit criminal sexual conduct involving sexual penetration, MCL 750.520g(1); MSA 28.788(7)(1), entered after a jury trial. We affirm.

Defendant argues that insufficient evidence was produced to support his conviction for assault with intent to commit criminal sexual conduct involving penetration. We disagree. In reviewing a sufficiency claim, we view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992). We do not interfere with the jury's role in determining the weight of the evidence or the credibility of witnesses. *Id*. at 514-515.

At trial, defendant's primary defense was that the complaint was fabricated. Defendant testified that no assault occurred and he did not attempt to have sexual intercourse with the fifteen-year-old complainant. On appeal, defendant argues that the evidence was insufficient because the facts, even considered in the light most favorable to the prosecutor, only showed that defendant attempted to engage in consensual sex with the complainant; therefore, the evidence failed to prove an assault occurred.

Defendant's argument is without merit. One of the required elements of an assault with intent to commit CSC offense is that the defendant committed an assault. See *People v Evans*, 173 Mich App 631, 634; 434 NW2d 452 (1988), citing *People v Snell*, 118 Mich App 750, 754-755; 325 NW2d 563 (1982). To establish the assault element, the prosecutor must prove that the defendant either attempted to commit a battery or committed an unlawful act that placed the victim in reasonable apprehension of receiving an immediate battery. *People v Reeves*, 458 Mich

236, 240; 580 NW2d 433 (1998), quoting *People v Sanford*, 402 Mich 460, 479; 265 NW2d 1 (1978). "A battery is the wilful and harmful or offensive touching of another person resulting from an act intended to cause the contact." *Espinoza v Thomas*, 189 Mich App 110, 119; 472 NW2d 16 (1991).

In this case, the complainant testified that defendant, against her wishes, physically pushed her over (on a truck seat), kissed her, grabbed her breast, and pulled her pants and undergarments down. The complainant further testified that defendant unzipped his pants, got on top of complainant, and then tried to penetrate her vaginally with his penis. The complainant testified that defendant's actions scared her. Additionally, complainant's brother testified that he saw defendant "humping" his sister. Viewing the evidence in a light most favorable to the prosecution, a rational trier of fact could conclude that the elements of the offense were proved beyond a reasonable doubt. It was for the jury to weigh the evidence, resolve the questions of fact, and determine the credibility of the witnesses. *Wolfe*, *supra*, at 514-515, quoting *People v Palmer*, 392 Mich 370, 375-376; 220 NW2d 393 (1974). By convicting defendant, the jury apparently chose to believe complainant's evidence.

Defendant next claims that the trial court erred by permitting the prosecutor to elicit from the complainant the fact that she had been sexually abused by her father. Because defendant did not object to this testimony at trial and thus failed to preserve the issue, our review is limited to whether the unpreserved error affected defendant's substantial rights. See *People v Grant*, 445 Mich 535, 553-554; 520 NW2d 123 (1994). We find no such error.

First, the evidence did not involve a character inference prohibited by MRE 404(b). See *People v VanderVliet*, 444 Mich 52, 64; 508 NW2d 114 (1993), amended 445 Mich 1205; 520 NW2d 338 (1994). Second, defendant's argument that the evidence was inadmissible under Michigan's rape shield statute, MCL 750.520j; MSA 28.788(10), was abandoned on appeal because defendant merely announced his position without supporting authority or argument. See *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Third, at trial defendant affirmatively explored complainant's sexual abuse history during cross-examination and used the evidence to attack complainant's credibility during his closing argument. Defendant cannot assign error to evidence he deemed proper at trial. See *People v Griffin*, 235 Mich App 27, 46; 597 NW2d 176 (1999). Finally, in light of the other evidence in support of defendant's guilt, we conclude that the admission of the disputed testimony did not affect defendant's substantial rights.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Harold Hood
/s/ Mark J. Cavanagh