

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD ERICH MUELLER,

Defendant-Appellant.

UNPUBLISHED

June 17, 2004

No. 247660

Saginaw Circuit Court

LC No. 02-021464-FH

Before: Fitzgerald, P.J. and Bandstra and Schuette, JJ

PER CURIAM.

Defendant appeals by right from a conviction following a jury trial for third-degree criminal sexual conduct (CSC III), MCL 750520d(1)(c). The trial court sentenced defendant to 162 to 270 months imprisonment, with credit for time served. We affirm.

I. FACTS

Defendant's conviction arises from his assault on a 33 year-old, mentally retarded male. Defendant took the victim home, where he showed the victim sexually explicit material and performed fellatio on him.

Defendant argues that the prosecution failed to produce sufficient evidence to allow a rational trier of fact to find beyond a reasonable doubt that the victim was mentally incapable of consent. However, plaintiff introduced expert testimony that the victim had the mental capacity of a five to seven year-old regarding sexual issues. The victim's mother testified that the victim was diagnosed as mentally impaired and that he needed special education. She also testified that he had only a rudimentary understanding of sex.

II. STANDARD OF REVIEW

In reviewing an appeal based on sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether the prosecutor introduced evidence sufficient to justify a rational trier of fact in finding that the essential elements of the crime were proved beyond a reasonable doubt. *People v Breck*, 230 Mich App 450, 456; 584 NW2d 602 (1998).

III. ANALYSIS

A person is guilty of committing criminal sexual conduct if the perpetrator engages in sexual penetration with another person that the perpetrator knows or has reason to know was mentally incapable. *Breck, supra* at 451; MCL 750.520d(1)(c). “Mentally incapable” means that a mental disease or defect caused the victim to be temporarily or permanently incapable of appraising the nature of his or her conduct. *Breck, supra* at 451; MCL 750.520a(f). This definition encompasses the victim’s understanding of the physical act as well as the nonphysical factors, such as the moral quality of the act. *Id* at 45.

Defendant first argues that the prosecution presented insufficient evidence to prove that the victim was mentally retarded. However, the victim’s mother testified that her son was mentally impaired and had required special education for most of his life. She also testified that the victim had almost no knowledge of sex. Further, Saginaw Community Mental Health therapist Jay McCrae, who treated the victim after the incident, testified that the victim had the mental capacity of a person between the ages of five and seven in the area of sexual issues. A rational trier of fact could have found from these facts that the victim was mentally incapable of consent.

Defendant next contends that the prosecution failed to present sufficient evidence to prove that defendant knew that the victim was mentally incapable of consent. Under the test set forth in *People v Baker*, 157 Mich App 613; 405 NW2d 479 (1986), it was not necessary for the prosecution to prove defendant’s actual, subjective knowledge of the victim’s mental retardation. Rather, the prosecution only needed to produce evidence showing that a reasonable person would have known that the victim was mentally incapable of consent. *Id.* at 615. Nevertheless, we find that the prosecution produced sufficient evidence to prove defendant’s subjective knowledge. The victim’s parents both testified that defendant had stated that his affinity for the victim was due to the victim’s resemblance to defendant’s own mentally impaired son. Given that the defendant’s own child was mentally impaired, a reasonable trier of fact could infer that the defendant has, as a result of his personal knowledge of and familiarity with mental illness, a heightened awareness of a mental impairment in another individual. Further, the victim testified that defendant gave him a bag of candy when he asked the victim not to tell his parents, thus permitting the jury to infer that defendant had bribed his victim in the way one might bribe a child. In addition, McCrae, who treated the victim after the incident, testified that someone clinically classified as mildly retarded would appear to a layperson as more severely retarded. The evidence was sufficient to allow a reasonable trier of fact to infer that defendant had knowledge of the victim’s mental incapacity.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Bill Schuette