

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

HODARI JELANI-PATANA LEWIS,

Defendant-Appellee.

UNPUBLISHED

December 21, 2006

No. 265564

Wayne Circuit Court

LC No. 05-005553-01

Before: Murphy, P.J., and Smolenski and Kelly, JJ.

PER CURIAM.

The prosecutor appeals as of right from a circuit court order granting defendant's motion to quash the information. We reverse and remand. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with third-degree criminal sexual conduct (CSC), MCL 750.520d(1)(a), and possession of a firearm during the commission of a felony, MCL 750.227b. The evidence showed that a 15-year-old girl, who had told defendant she was 17 or 18, willingly performed fellatio on him. Defendant argued that he took no active role in the sexual encounter and, therefore, did not "engage" in sexual penetration. The district court rejected that argument and bound defendant over for trial. Defendant thereafter filed a motion to quash in the circuit court, which determined that consent was a defense or that it was the 15-year-old female who committed the offense against defendant and, accordingly, dismissed the charges.

"A circuit court's ruling regarding a motion to quash an information and the district court's decision to bind over a defendant are reviewed to determine whether the district court abused its discretion in making its decision." *People v Hill*, 269 Mich App 505, 513-514; 715 NW2d 301 (2006). In reviewing the district court's decision, "the circuit court is limited to the entire record of the preliminary examination and may not substitute its judgment for that of the district court." *People v Green*, 260 Mich App 710, 713-714; 680 NW2d 477 (2004). The circuit court may reverse the district court's decision only for an abuse of discretion. *People v Yost*, 468 Mich 122, 126; 659 NW2d 604 (2003). "An abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes." *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006).

This Court's review of the circuit court's analysis of the bindover process is de novo. This Court must determine if the magistrate committed an abuse of discretion in finding probable cause to believe that defendant committed the offenses charged. This Court decides whether the evidence presented to the magistrate was sufficient to establish, as a matter of law, that the offenses charged had probably been committed by defendant. There must be evidence of each element of the crime charged or evidence from which the elements can be inferred, although the evidence need not establish guilt beyond a reasonable doubt. *People v McBride*, 204 Mich App 678, 681; 516 NW2d 148 (1994).

Third-degree CSC "is a general intent crime proved by showing that the defendant committed a proscribed sexual act." *People v Corbiere*, 220 Mich App 260, 266; 559 NW2d 666 (1996). As applicable to this case, the elements of the offense are (1) that the defendant engaged in sexual penetration with another person, and (2) the other person was at least 13 and under 16 years of age. MCL 750.520d(1)(a). Defendant does not dispute that the evidence showed that a 15-year-old female performed fellatio on him. Sexual penetration is defined to include fellatio. MCL 750.520a(p). Although the female victim told defendant she was 17 or 18 years old and may have appeared older than her actual age, a defendant's reasonable mistake regarding the victim's age is not a defense to third-degree CSC. *People v Cash*, 419 Mich 230, 234, 246; 351 NW2d 822 (1984). Further, even if the victim willingly performed the sexual act, a child between the ages of 13 and 16 cannot legally consent to the act because sexual penetration of a 15-year-old child is automatically third-degree CSC and thus consent is not a defense to the crime, *People v Starks*, 473 Mich 227, 235-236; 701 NW2d 136 (2005), which is a strict liability offense, *People v Apgar*, 264 Mich App 321, 328; 690 NW2d 312 (2004), lv gtd 474 Mich 1099 (2006).

Whether defendant "engaged" in sexual penetration is an issue of statutory interpretation. Statutory interpretation is a question of law which is reviewed de novo on appeal. *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 62; 642 NW2d 663 (2002). The rules of statutory construction require the courts to give effect to the Legislature's intent. This Court should first look to the specific statutory language to determine the intent of the Legislature, which is presumed to intend the meaning that the statute plainly expresses. *Institute in Basic Life Principles, Inc v Watersmeet Twp (After Remand)*, 217 Mich App 7, 12; 551 NW2d 199 (1996). When terms are not expressly defined by statute, it is appropriate to consult dictionary definitions. *People v Denio*, 454 Mich 691, 699; 564 NW2d 13 (1997).

The term "engage" is not defined by MCL 750.520a. The dictionary definitions include (1) "to involve oneself or become occupied; participate: *engage in conversation*," *The American Heritage Dictionary of the English Language* (1969); (2) "to occupy oneself; become involved: *to engage in business or politics*," *Random House Webster's Unabridged Dictionary* (2nd ed, 1998); and (3) "to employ or involve oneself; to take part in; to embark on," *Black's Law Dictionary* (8th ed, 2004). Even accepting defendant's argument that he did not do anything to encourage or induce the sexual activity, by knowingly allowing the victim to perform fellatio on him, defendant involved himself in, participated in, or took part in sexual penetration. Therefore, even if defendant did not initiate or instigate the sexual encounter, the evidence showed that he engaged in sexual penetration. Because he engaged in sexual penetration with a 15-year-old girl, there was probable cause to believe that defendant committed the crime charged. Therefore, the

district court did not abuse its discretion in binding defendant over for trial on that charge. Consequently, the circuit court erred in granting defendant's motion to quash.

Reversed and remanded for reinstatement of the charges. We do not retain jurisdiction.

/s/ William B. Murphy
/s/ Michael R. Smolenski
/s/ Kirsten Frank Kelly