

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
October 18, 2011

v

CHRISTOPHER MICHAEL WILLIAMS,

Defendant-Appellant.

No. 298937
Kent Circuit Court
LC No. 09-009878-FC

Before: MARKEY, P.J., and SERVITTO and RONAYNE KRAUSE, JJ.

PER CURIAM.

Defendant appeals as of right his convictions, following a jury trial, of two counts of first-degree criminal sexual conduct (CSC-1), MCL 750.520b(1)(a) (victim under 13 years of age), and one count of second-degree criminal sexual contact (CSC-2), MCL 750.520c(1)(a) (victim under 13 years of age). Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent sentences of 35 to 90 years' imprisonment for each CSC-1 conviction and 20 to 60 years' imprisonment for his CSC-2 conviction. We affirm.

Defendant first argues that there was insufficient evidence to support his convictions. We disagree. In reviewing a claim of insufficient evidence, we view the evidence de novo in the light most favorable to the prosecution and drawing all reasonable inferences and credibility choices in support of the verdict to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 499-400; 614 NW2d 78 (2000).

Each of defendant's convictions requires as one of their respective elements that the victim was under the age of 13 at the time; the distinction between them is that CSC-1 requires sexual penetration, whereas CSC-2 requires sexual contact. MCL 750.520b(1)(a); MCL 750.520c(1)(a). It is not disputed that the victim was under the age of 13 at the relevant times. Sexual penetration means any "intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required." MCL 750.520a(r). Sexual contact includes, in relevant part, intentionally touching the victim or actor's "intimate parts," whether over or under any clothing, "if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification" or "done for a sexual purpose." MCR 750.520a(q). Sexual contact is therefore an objective determination based on the reasonable person standard. See *People v Piper*, 233 Mich App 642,

646-647; 567 NW2d 483 (1997). The victim's testimony need not be corroborated. MCL 750.520h.

The victim testified about multiple instances of anal penetration, and she described two of those incidents in considerable detail. She additionally testified that defendant made her put her hand on his penis and "move it up and down" and defendant's penis felt like "a hard tube." Her testimony establishes both sexual penetration and what could be objectively regarded as intentionally touching defendant's penis for a sexual purpose or for the purpose of sexual arousal or gratification. Additionally, there was corroborating evidence. The victim had bruises between her anal and genital region, which the examining physician testified were consistent with the history of sexual assault the victim provided. There was also an additional witness who saw the victim lying face down on her bed and defendant was standing behind the victim, facing her, with his pants down. The fact that no DNA evidence was found and that the victim did not have precise recall of exact timing do not preclude the jury from choosing to believe the victim. *People v Newby*, 66 Mich App 400, 405; 239 NW2d 387 (1976). We may not comply with defendant's request for us to second-guess the jury's evaluation of the relative credibility of the witnesses. The evidence was sufficient to support defendant's convictions.

Defendant also claims that he was denied his constitutional right to present a defense because he was not informed of his statutory right, pursuant to MCL 776.21(5), to submit to a polygraph examination. We disagree.

A defendant accused of, among other things, CSC-1 or CSC-2 "shall be given a polygraph examination or lie detector test if the defendant requests it." MCL 776.21(5). However, no statute entitles a defendant to be informed that such a request can be made. Defendant's failure to request a polygraph test before his conviction waived his right to a polygraph test. See *People v Phillips*, 469 Mich 390, 396; 666 NW2d 657 (2003). Furthermore, the statute is for the purpose of assisting in investigation of crimes and possibly avoiding the need for a trial, not for the purpose of developing evidence to use *at* a trial. *Id.* at 395 n 3; *People v Wilkens*, 267 Mich App 728, 735; 705 NW2d 728 (2005). Indeed, the results of a polygraph test, no matter what those results were, would in any event remain inadmissible. *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003). Because any polygraph test results could not have been admissible, the absence of any such test result cannot have had any bearing on defendant's right to present a defense. *Id.*

Furthermore, even if defendant had a right to be informed that he could take a polygraph test—which he does not—we find no indication that his failure to take one affected the outcome of the proceedings. There is no evidence tending to show that he would have passed a polygraph test. Polygraphs may have use as one of many investigative tools available to law enforcement, but given their notorious unreliability, we know of no reason why the prosecution would necessarily have exercised its discretion to decide to dismiss the charges even if defendant passed one. Finally, again, even if defendant had passed a polygraph test, that fact would have remained inadmissible.

Defendant was not entitled to be informed about his right to take a polygraph test, and he was not prejudiced by the failure to so inform him, so he likewise may not claim ineffective assistance of counsel on this basis.

Affirmed.

/s/ Jane E. Markey

/s/ Deborah A. Servitto

/s/ Amy Ronayne Krause