

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

NINO NUCULOVIC,

Defendant-Appellant.

UNPUBLISHED

May 10, 1996

No. 177018

LC No. 93-000350-FC

Before: Taylor, P.J., and Fitzgerald and P.D. Houk,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit criminal sexual conduct, MCL 750.520g(1); MSA 28.788(7)(1), and was sentenced to three years' probation, with the first year to be served in jail. Defendant appeals as of right. We affirm.

Defendant first argues that there was insufficient evidence to convict him of the crime. In reviewing the sufficiency of the evidence at trial, this Court views the evidence in the light most favorable to the prosecution and determines whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Those elements, as they relate to assault with intent to commit criminal sexual conduct, require an assault and a sexual purpose, and when the act involves penetration, defendant must have intended an act involving some sexually improper intent or purpose. *People v Snell*, 118 Mich App 750, 754-755; 325 NW2d 563 (1982). An actual touching is not required, and when the act involves penetration it is not necessary to show that the sexual act was started or completed. *Id.* at 755.

Here, defendant argues that there was insufficient evidence that force or coercion was used during his encounter with the complainant. He contends that, even if grabbing complainant's arm constituted a battery, the arm was released before he touched her face with his penis. However, the complainant testified that defendant grabbed her right arm and placed it on his exposed penis while

*Circuit judge, sitting on the Court of Appeals by assignment.

repeatedly instructing her to play with his penis. Another person was holding down the complainant's left arm. While the other person held the complainant's hands above her head, defendant instructed the complainant to "suck his dick." Defendant's penis touched the complainant's lips, but she did not open her mouth to allow entry. This evidence, viewed in the light most favorable to the prosecution, is sufficient to support a finding that defendant assaulted complainant and used force to achieve the sexual contact.

Defendant also maintains that the trial court erred by failing to sua sponte instruct the jury regarding the lesser included offense of assault and battery or simple assault. This issue was not preserved for appeal because it was not set forth in defendant's statement of the questions involved. MCR 7.212(C)(5); *People v Yarbrough*, 183 Mich App 163, 165; 454 NW2d 419 (1990).

Last, defendant asserts that the trial court abused its discretion in allowing the prosecutor to question a witness on redirect examination about the witness' relationship with defendant. We disagree. Generally, the scope of redirect examination is limited to areas covered in cross-examination. See *People v Weatherford*, 193 Mich App 115, 121-122; 483 NW2d 924 (1992). Here, defense counsel asked the witness on cross-examination whether she had known defendant before the day of the incident. This question opened the door for further questions regarding the witness' relationship with defendant. *Id.* Indeed, the prosecutor began the allegedly improper line of questioning by repeating the question asked by defense counsel. We find no abuse of discretion in the admission of the evidence.

Affirmed.

/s/ Clifford W. Taylor

/s/ E. Thomas Fitzgerald

/s/ Peter D. Houk