STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LEWIS TAYLOR,

Defendant-Appellant.

UNPUBLISHED
June 25, 1996

No. 182848
LC No. 90-009752

Before: White, P.J., and Smolenski, and R.R. Lamb,[*] JJ.

PER CURIAM.

Defendant, Robert Lewis Taylor, appeals by right his bench trial conviction of two counts of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), and two counts of second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3). On appeal, defendant argues that the prosecutor failed to present sufficient evidence to prove beyond a reasonable doubt that he was guilty of the crimes of which he was charged and convicted. We affirm.

The crime of first-degree criminal sexual conduct may be established by showing that defendant engaged in sexual penetration with another person who was under the age of thirteen. MCL 750.520b; MSA 28.788(2). Sexual penetration is defined by statute to mean "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other 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(1); MSA 28.788(1)(1)(emphasis added).

The crime of second-degree criminal sexual conduct may be established by showing that defendant engaged in sexual contact with another person who was under the age of thirteen. MCL 750.520b; MSA 28.788(2). Sexual contact is defined to include "the intentional touching of the *victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts*, if the intentional touching can reasonably

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

be construed as being for the purpose of sexual arousal or gratification." MCL 750.520a(k); MSA 28.788(1)(k) (emphasis added). Intimate parts include the primary genital area and breasts. MCL 750.520a(c); MSA 28.788(1)(c).

Viewing the evidence in a light most favorable to the prosecutor, we conclude that sufficient evidence was presented at trial from which a rational trier of fact could find beyond a reasonable doubt that the prosecutor established all the necessary elements of the offenses. *People v Wolfe*, 440 Mich 508, 513-515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Lawton*, 196 Mich App 341, 348; 492 NW2d 810 (1993). The testimony presented at trial established that the victim was eleven years old in August of 1990 when the alleged sexual acts occurred. The victim testified that on August 25, 1990, defendant touched her breasts on top of her clothing and placed her hand on his hard penis telling her that he was "going to do" both her and her mother. She further testified that on August 27, 1990, defendant inserted his penis, and later his finger, into her vagina. Thus, the victim's testimony at trial established that defendant committed two acts of sexual contact on August 25, 1990, and two acts of sexual penetration on August 27, 1990. The victim's testimony that defendant engaged in acts of sexual penetration and contact with her is a sufficient basis on which the trier of fact can convict. *People v Robideau*, 94 Mich App 663, 674; 289 NW2d 846 (1980).

Defendant argues that the testimony of Dr. Knazik, who examined the victim on August 28, 1990, created a reasonable doubt as to whether the alleged acts of sexual penetration and contact occurred. We disagree. Dr. Knazik testified that the victim's hymen was intact and that there were no bruises or lacerations found on the victim's labia majora or labia minora. Dr. Knazik testified, however, that the absence of bruising and lacerations does not mean that sexual penetration did not occur, and that the insertion of a penis or a finger into the labia majora would not leave any physical evidence. Further, Dr. Knazik went on to explain that the hymen is broken when penetration occurs between the labia minora. Dr. Knazik's testimony, therefore, is not inconsistent with penetration through the labia majora, which is sufficient to constitute penetration pursuant to the statute. *People v Bristol*, 115 Mich App 236, 238; 320 NW2d 229 (1981). Moreover, Dr. Knazik also testified that there would not necessarily be physical evidence of touching unless it was heavy touching which caused bruising. Thus, Dr. Knazik's testimony does not refute or substantiate that the alleged acts of sexual penetration and contact occurred. As a result, Dr. Knazik's testimony is not determinative of these issues and the trier of fact was not obliged to conclude that it created a reasonable doubt as to whether the alleged acts of sexual penetration and contact did in fact occur.

Affirmed.

/s/ Helene N. White
/s/ Michael R. Smolenski
/s/ Richard R. Lamb