

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VERNON HALL,

Defendant-Appellant.

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UNPUBLISHED

June 28, 1996

No. 181746

LC No. 94-000129

Before: Wahls, P.J., and Young and Beach,\* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of second-degree criminal sexual conduct with a person under the age of thirteen, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). He was sentenced to five years' probation with various conditions. He appeals as of right. We affirm.

Defendant first contends that he was denied a fair trial because he was not apprised of specific dates when the alleged sexual misconduct occurred. We disagree. Defendant's daughter did not testify as to the number of sexual abuse incidents, nor did she testify as to the exact dates when the alleged abuse occurred. However, the prosecution need only state the time of an offense "as nearly as the circumstances will permit." MCL 767.51; MSA 28.99. The investigating officer testified that he made an effort to learn specific dates, but defendant's daughter had trouble remembering them. She was approximately eleven or twelve years of age when the abuse allegedly occurred. Because children who are subjected to ongoing abuse have

difficulty remembering dates, Michigan courts have recognized that an imprecise time allegation is sufficient in sexual offense cases involving children. *People v Howell*, 396 Mich 16, 28; 238 NW2d 148 (1976); *People v Miller*, 165 Mich App 32, 46-47; 418 NW2d 668 (1987); *People v Naugle*, 152 Mich App 227, 235, n 1; 393 NW2d 592 (1987).

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

In addition, we find that the lack of specific dates in the information did not deprive defendant of a substantial right or resulted in a miscarriage of justice. MCL 769.26; MSA 28.1096; *People v Owens*, 37 Mich App 633, 638; 195 NW2d 36 (1972). First of all, time is not an element of a sexual assault offense such that defendant was not deprived of preparing an adequate defense. *Miller, supra* at 47. Second, defendant's daughter indicated that the sexual abuse had occurred over many months in her home. Defendant lived in the same house with his daughter over an extended period of time, and often, his daughter was left solely in his care. Consequently, defendant would have difficulty presenting an alibi defense. *Naugle, supra* at 235. Accordingly, we hold that the trial court did not abuse its discretion in when denying defendant's motion to dismiss.

Defendant next alleges that there was insufficient evidence to support his conviction. In reviewing a challenge to the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992); *People v Hampton*, 407 Mich 354, 366; 285 NW2d 284 (1979), cert den 449 US 885; 101 S Ct 239; 66 L Ed 2d 110 (1980). Specifically, defendant argues that there was no sexual contact and that, even if there was, he did not touch his daughter's breasts for the purpose of sexual arousal or gratification. Proof of defendant's purpose or specific intent is not required for conviction of second-degree criminal sexual contact. *People v Fisher*, 77 Mich App 6, 13; 257 NW2d 250 (1977). Both defendant and his daughter testified as to the events surrounding defendant's touching of her breasts. With regards to this "credibility contest," the jury obviously did not believe defendant. In the context of a sufficiency of the evidence issue, determinations based on the weight and credibility of evidence should not be disturbed on appeal. *People v Martin*, 199 Mich App 124, 135; 501 NW2d 198 (1993). Thus, we find that sufficient evidence exists to support defendant's conviction.

Defendant also argues that the jury verdict was against the great weight of the evidence. However, there is no indication that the trial court disbelieved the testimony of prosecution witnesses or found the verdict perverse. *People v Herbert*, 444 Mich 466, 475-477; 511 NW2d 654 (1993). Although conflicting evidence was presented at trial, the jury verdict was not against the overwhelming weight of the evidence. Therefore, the trial court did not abuse its discretion in denying defendant's motion for a new trial.

Finally, defendant argues that he is entitled to resentencing since the trial court denied him a right to meaningful allocution. We disagree. When speaking to the court, defendant claimed that he was innocent and commented that the length of jury deliberations indicated that the verdict was not unanimous. When the court asked for clarification, defendant again reasserted his innocence, but the judge interrupted him, asking defendant to clarify his statements about the jury. Defendant stated that he believed one juror may have held out. The judge's request for clarification did not constitute a denial of his right to allocution. Defendant was allowed to speak

and even elaborate his statement. *People v Reeves*, 143 Mich App 105, 107; 371 NW2d 488 (1985). Hence, we find defendant was afforded his right to full allocution.

Affirmed.

/s/ Myron H. Wahls  
/s/ Robert P. Young, Jr.  
/s/ Harry A. Beach