

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY E. POXSON,

Defendant-Appellant.

UNPUBLISHED

August 20, 1996

No. 177688

LC No. 93-066589

Before: Gribbs, P.J., and Hoekstra and C.H. Stark,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of fourth-degree criminal sexual conduct (CSC-4th), MCL 750.520e(1)(a); MSA 28.788(5)(1)(a), and was sentenced to concurrent terms of two years' probation for each conviction. Defendant now appeals as of right, and we affirm.

Defendant, a lieutenant in the Lansing Police Department, was charged with three counts of CSC-4th after three women accused defendant of inappropriately touching them in the course of separate traffic stops. In all three incidents, the women, who worked at topless bars, were pulled over after leaving work. One woman testified that defendant put his hand inside her shirt and touched her breasts, then touched her crotch area, and then asked her to take off her top in exchange for not taking her to jail on an outstanding warrant. A second woman testified that defendant also touched her breasts beneath her clothing in the course of allegedly searching her for weapons. A third woman testified that defendant cupped her breasts in his hands through her clothing, shined his flashlight down her shirt, and grabbed her buttocks. Defendant conceded that he had stopped the three women and searched them for weapons, but denied touching them inappropriately. Defendant was found guilty on two of the counts, and not guilty on the remaining count.

Defendant first argues that there was insufficient evidence of force or coercion to support his convictions of CSC-4th. We disagree. The statute in effect at the time defendant was convicted stated:

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

(1) A person is guilty of criminal sexual conduct in the fourth degree if he or she engages in sexual contact with another person and if any of the following circumstances exists:

(a) Force or coercion is used to accomplish the sexual contact. Force or coercion **includes but is not limited to** any of the circumstances listed in section 520b(1)(f)(i) to (iv). [emphasis added.]

MCL 750.520b(1)(f)(i)-(iv); MSA 28.788(2)(1)(f)(i)-(iv) contained the following examples of force or coercion:

Force or coercion **includes but is not limited to** any of the following circumstances:

- (i) When the actor overcomes the victim through the action application of physical force or physical violence.
- (ii) When the actor coerces the victim to submit by threatening to use force of violence on the victim, and the victim believes that the actor has the present ability to execute these threats.
- (iii) When the actor coerces the victim to submit by threatening to retaliate in the future against the victim, or any other person, and the victim believes that the actor has the ability to execute this threat. As used in this subdivision, “to retaliate” includes threats of physical punishment, kidnapping, or extortion.
- (iv) When the actor engages in the medical treatment or examination of the victim in a manner or for purposes which are medically recognized as unethical or unacceptable. [emphasis added.]

Here, we conclude that under the facts of the instant case, defendant’s conduct constituted coercion under MCL750.520e(1)(a); MSA 28.788(5)(1)(a). Although defendant’s conduct was not included among the enumerated examples of coercion contained in MCL 750.520b(1)(f)(i)-(iv); MSA 28.788(2)(1)(f)(i)-(iv), the Legislature did not limit the definition of coercion to those examples contained in the statute. *People v Premo*, 213 Mich App 406, 410; 540 NW2d 715 (1995). The existence of force or coercion is to be determined in light of all the circumstances. *Id.* In light of the circumstances of the instant case, we conclude that defendant, a police officer effectuating traffic stops, was in a position of authority over the women. *Id.* at 410-411.. We further find that defendant’s conduct, like the conduct of the defendant school teacher in *Premo*, was unprofessional, irresponsible, and an abuse of his authority as an officer of the law. Accordingly, we conclude that defendant’s conduct was sufficient to constitute coercion under MCL 750.520e(1)(a); MSA 28.788(5)(1)(a).

Defendant next argues that the trial court’s instruction on the “force or coercion” element of CSC-4th was inaccurate and inadequate. We have reviewed the jury instructions at issue and conclude

that the instructions fairly presented the issues to be tried and adequately protected defendant's rights. *People v Davis*, 216 Mich App 47, 54; 549 NW2d 1 (1996). Defendant's claims to the contrary are without merit.

Defendant's third argument is that the trial court erred in denying him the opportunity to present evidence concerning allegedly false prior allegations of sexual contact between one of the women and a former high school teacher. After reviewing the evidence at issue, we find no abuse of discretion in the trial court's decision to exclude the proffered evidence. We agree with the trial court that defendant here failed to establish that the prior accusation was false. See *People v Yarger*, 193 Mich App 532, 538; 485 NW2d 119 (1992). This evidence was properly excluded.

Finally, defendant argues that the trial court erred in allowing the prosecution to use "prior acts" evidence. Specifically, defendant objects to the trial court's decision to allow the testimony of each of the three victims to be admitted with regard to all of the charges. Again, we find no abuse of discretion in the trial court's decision. Because the evidence was not admitted to prove defendant's character or to show propensity, but rather was admitted for purposes of showing an absence of mistake or accident and the existence of a scheme or plan, we find that the evidence was relevant under MRE 404(b). Furthermore, the evidence was relevant under MRE 402, and the danger of undue prejudice did not substantially outweigh the probative value of the evidence under MRE 403. Accordingly, we find no abuse of discretion in the trial court's decision to allow the admission of this evidence. *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993).

Affirmed.

/s/ Roman S. Gibbs
/s/ Joel P. Hoekstra
/s/ Charles H. Stark