

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANGELO LARKIN,

Defendant-Appellant.

UNPUBLISHED

September 13, 1996

No. 174907

LC No. 93011992

Before: Cavanagh, P.J., and Marilyn Kelly and J.R. Johnson,* JJ.

PER CURIAM.

Defendant appeals as of right following his conviction for third-degree criminal sexual conduct. MCL 750.520d(1)(a); MSA 28.788(4)(1)(a). He argues that there was insufficient evidence to sustain his conviction. He further alleges that he was denied the effective assistance of counsel. We affirm.

The elements of third-degree criminal sexual conduct based on the age of the victim are sexual penetration of a person between thirteen and sixteen years old. *People v Hunt*, 442 Mich 359, 364; 501 NW2d 151 (1993). Sexual penetration is defined to include any intrusion, however slight, of any part of a person's body or any object into the anal or genital opening of another person's body. MCL 750.520a(1); MSA 28.788(1)(l).

Here, the prosecution presented the direct testimony of complainant. She stated that, when she was fifteen years old, defendant penetrated her vagina with his finger. This testimony, if considered in the light most favorable to the prosecution, is sufficient to justify a rational trier of fact's determination that defendant is guilty beyond a reasonable doubt.

Defendant argues that complainant's testimony is not credible and is inconsistent throughout. However, we will not interfere with the fact finder's determination regarding the weight to be accorded to evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), modified 441 Mich 1201 (1992); *People v Jackson*, 178 Mich App 62, 65; 443 NW2d 423 (1989).

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

With respect to the ineffective assistance of counsel claim, defendant argues that he was prejudiced when counsel elicited information regarding defendant's children by two teenage girls in the neighborhood. Defendant argues that the evidence damaged defendant's character in the eyes of the jury.

We find, however, that defendant has not overcome the presumption that the questioning was trial strategy. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). In his opening statement defense counsel attempted to portray defendant as a concerned and responsible father to his children and a man who could be trusted. Even though his strategy backfired when he questioned Baker and Burse, the fact that it did not work is not evidence of ineffective assistance of counsel. *People v Murph*, 185 Mich App 476, 479; 463 NW2d 156 (1990), superseded 190 Mich App 707; 476 NW2d 500 (1991).

Next, defendant argues that counsel was ineffective for failing to investigate whether complainant had made previous false allegations of sexual molestation. Defendant allegedly told defense counsel that complainant was receiving psychiatric counseling as the result of making false allegations. Defendant asserts that counsel should have requested an in camera hearing with respect to her psychiatric records to determine if they contained any relevant information.

We decline to find ineffective assistance of counsel on the record before us. Defendant did not present supporting evidence for his allegations such as affidavits from others who were falsely accused or from anybody who heard of such false allegations. Defendant has failed to present any articulable facts which would demonstrate a reasonable probability that complainant's records contain material information necessary to his defense. *Stanaway, supra*, p 650. Therefore, defense counsel was not ineffective for failing to move for the in camera hearing. See *People v Gist*, 188 Mich App 610, 613; 470 NW2d 475 (1991).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Marilyn Kelly

/s/ J. Richardson Johnson