STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES EDGAR GRASSEL,

Defendant-Appellant.

UNPUBLISHED
October 25, 1996

No. 183443
LC No. 94-5318

Before: Taylor P.J. and Markey and N. O. Holowka, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree criminal sexual conduct. MCL 750.520b(1)(b)(i); MSA 28.788(2)(1)(b)(i) (sexual penetration of a person at least thirteen but less than sixteen and the actor is a member of same household as the victim). Defendant pleaded guilty of being an habitual offender, fourth offense. MCL 769.12; MSA 28.1084. Defendant was sentenced to fifteen to forty years in prison. Defendant appeals as of right and we affirm.

Defendant argues there was insufficient evidence produced at the preliminary examination to establish that he was a member of the same household as the victim. We disagree.

A defendant must be bound over for trial if the evidence presented at the preliminary examination establishes that a felony has been committed and there is probable cause to believe that the defendant was the perpetrator. MCL 766.13; MSA 28.931; *People v Woods*, 200 Mich App 283, 287; 504 NW2d 24 (1993). The prosecutor is not required to prove each element of the offense beyond a reasonable doubt. *Id*. at 288. However, there must be evidence regarding each element of the crime charged or evidence from which the elements may be inferred. If the evidence conflicts or raises a reasonable doubt, the defendant should be bound over for resolution of the issue by the trier of fact. *People v Cotton*, 191 Mich App 377, 384; 478 NW2d 681 (1991). After a review of the preliminary examination transcript, we are satisfied that sufficient evidence was presented to establish that defendant and the victim were members of the same household. *People v Garrison*, 128 Mich App 640, 646; 341 NW2d 170 (1983).

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

Defendant also argues that there was insufficient evidence presented at trial to establish that he was a member of the same household as the victim. We disagree.

In reviewing the sufficiency of evidence, this Court must view it in the light most favorable to the prosecution. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). Viewed in such light, the prosecutor "must offer enough evidence for a court to conclude that a rational trier of fact could find that the essential elements of the crime have been established." *Id.* The evidence adduced at trial showed a living arrangement in which the victim stayed with defendant at defendant's mother's house, thus resembling a family unit residing under one roof as opposed to a brief or chance visit. The evidence established that defendant had a close and ongoing relationship with the victim and that the victim was subordinate to defendant, and that the victim experienced this relationship with defendant as a coercive authority. Viewing the evidence in the required light, we are satisfied that the evidence presented at trial was sufficient to allow a rational factfinder to conclude that defendant was a member of the same household as the victim. *Garrison*, *supra*.

Defendant next claims that he was denied a fair trial by the court's failure to give the circumstantial evidence instruction found in the criminal jury instructions. We disagree.

Defendant did not object to the trial court's failure to give this instruction. MCL 768.29; MSA 28.1052 specifically states that the court's failure to instruct on any point of law shall not be ground for setting aside a jury verdict unless the accused requested such an instruction. Appellate review is foreclosed absent manifest injustice. *People v Van Dorsten*, 441 Mich 540; 544-545; 494 NW2d 737 (1993). Although we know of no reason why the trial court failed to give this instruction, we do not find manifest injustice. See *People v Ullah*, 216 Mich App 669, 677;550 NW2d 568 (1996); *People v Davis*, 199 Mich App 502, 515; 503 NW2d 457 (1993).

Finally, defendant argues that he is entitled to a new trial because of a comment made by the trial court in overruling a prosecution objection. While the trial court's use of the word "unfortunate" may have been improper, it did not deny defendant a fair trial. Any prejudice that may have arisen from the judge's comment was dispelled when the court instructed the jury that her comments and rulings were not evidence and that she was not trying to influence the jury's vote or express a personal opinion and that if the jury believed she had an opinion the jury was to pay no attention to the opinion. We have no reason to believe that the jury did not follow this instruction. *People v Reed*, 449 Mich 375, 401; 535 NW2d 496 (1995) (jurors are presumed to follow the law). In no event do we find the trial court's comment to have produced a miscarriage of justice. MCL 769.26; MSA 28.1096 (no verdict shall be set aside in any criminal case on the ground of misdirection of the jury unless error resulted in a miscarriage of justice).

Affirmed.

/s/ Clifford W. Taylor
/s/ Jane E. Markey
/s/ Nick O. Holowka