

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEE HART,

Defendant-Appellant.

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UNPUBLISHED

November 19, 1996

No. 190097

LC No. 94-012190

Before: Bandstra, P.J., and Neff and M. E. Dodge,\* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for criminal sexual conduct in the second degree, MCL 750.520c(1)(a), MSA 28.788(3)(1)(a). Defendant was sentenced to three years probation with the last year to be served in the Wayne County Jail. The jail term is reviewable and can be waived if defendant complies with all other terms and conditions of probation. We affirm.

Defendant first argues that his guilty verdict was against the great weight of the evidence. We disagree. Under Michigan law, a person is guilty of criminal sexual conduct in the second degree when he engages in sexual contact with another person and the other person is under thirteen years of age. MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). Sexual contact is defined as 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 that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification.” MCL 750.520a(k); MSA 28.788(1)(k).

In determining whether a verdict is against the great weight of the evidence, we review the whole body of proofs and analyze the record in detail. *Arrington v Detroit Osteopathic Hospital (On Remand)*, 196 Mich App 544, 560; 493 NW2d 492 (1992). There is no dispute that defendant touched complainant’s clothing covering the immediate area of complainant’s intimate part. Nor is there any dispute that complainant was under thirteen years of age when the incident occurred. Instead, the disputed issue was whether defendant had the requisite intent. Although the accused must touch a genital area intentionally, he need not act with the purpose of sexual gratification; it suffices that the

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

intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification. MCL 750.520a(k); MSA 28.788(1)(k); *People v Fisher*, 77 Mich App 6, 13; 257 NW2d 250 (1977). Thus, the question is whether from the evidence, the trial court properly and reasonably construed that the touching was for sexual arousal or gratification.

Defendant argues that the verdict was against the great weight of the evidence because the only evidence that suggested any wrongdoing on his part was complainant's testimony. Defendant argues that complainant's testimony cannot be believed because complainant was inconsistent in his statements to family members and the police. This Court gives great deference to the trial court's opportunity to hear the witness and its consequent unique qualification to assess credibility. *In Re Leone Estate*, 168 Mich App 321, 324; 423 NW2d 652 (1988). If there is conflicting evidence, the question of credibility should be left for the fact finder. See *Bosak v Hutchinson*, 422 Mich 712, 740; 375 NW2d 333 (1985). The trial court believed complainant when he testified that defendant rubbed complainant's penis while rocking him and said "this feels good," and found defendant guilty. Although there were some inconsistencies in complainant's statements regarding the incident, they were not so great as to render complainant's testimony incredible. Accordingly, we find that the verdict was not against the great weight of the evidence.

Defendant next argues that reversal is required because the trial court accepted hearsay testimony consisting of out of court statements made by the complaining witness to his mother. We disagree. Because defendant elicited this testimony, he cannot now be heard to complain that its admission was in error. *People v King*, 158 Mich App 672, 677; 405 NW2d 116 (1987).

Affirmed.

/s/ Richard A. Bandstra

/s/ Janet T. Neff

/s/ Michael E. Dodge