STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TODD CHRISTOPHER RESPECKI,

Defendant-Appellant.

UNPUBLISHED
October 14, 1997

No. 192245
Cheboygan Circuit Court
LC No. 95-001350-FC

Before: Fitzgerald, P.J., and Markey and J. B. Sullivan*, JJ.

PER CURIAM.

Defendant was convicted by a jury of two counts of third-degree criminal sexual conduct (CSC III), MCL 750.520d; MSA 28.788(4), and one count of fourth-degree criminal sexual conduct (CSC IV), MCL 750.520e; MSA 28.788(5). He was sentenced to concurrent prison terms of 54 to 180 months for each of the CSC III convictions and sixteen to twenty-four months for the CSC IV conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the evidence of sexual penetration was insufficient to support the third-degree CSC conviction. Sexual penetration is defined in the statute to include "any other intrusion, however, slight, of any part of a person's body." MCL 750.520a(1); MSA 28.788(1)(1). Digital penetration constitutes "sexual penetration" under this definition. *People v Hammons*, 210 Mich App 554, 557; 534 NW2d 183 (1995). The complainant testified that defendant digitally penetrated her on several occasions. A complainant's testimony alone has been deemed sufficient for a reasonable jury to infer that the act occurred. *People v Reinhardt*, 167 Mich App 584, 598; 423 NW2d 275, vacated on other grounds 436 Mich 866 (1988); *People v Robideau*, 94 Mich App 663, 674; 289 NW2d 846 (1980).

Defendant also argues that the evidence of force or coercion was insufficient to support the fourth-degree CSC conviction. However, the subsection of the fourth-degree CSC statute under which defendant was convicted does not require proof of force of coercion. MCL 750.520e(1)(a); MSA 28.788(5)(1)(a).

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

Defendant also argues that the failure of his trial counsel to move to suppress evidence constituted ineffective assistance of counsel. We disagree. First, the letter mailed to defendant by the complainant was retrieved by the complainant's father and, therefore, did not involve the state action necessary to invoke the Fourth Amendment protection against unreasonable searches and seizures.[1] Second, warrantless participant monitoring does not violate a defendant's Fourth Amendment rights. *United States v White*, 401 US 745, 753-754; 91 S Ct 1122; 28 L Ed 2d 453 (1971); *People v Collins*, 438 Mich 8, 11; 4675 NW2d 684 (1991). Thus, defense counsel's failure to move to suppress evidence that was not the product of an unreasonable search and seizure does not constitute ineffective assistance of counsel. Defense counsel was not required to bring meritless motions. See, e.g., *People v Torres (On Remand)*, 222 Mich App 411, 425; 564 NW2d 149 (1997).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey
/s/ Joseph B. Sullivan

[1] Defendant contends that the letter was obtained in violation of federal criminal statutes that proscribe postal workers from delaying, destroying, or stealing mail. 18 USC 1703, 1709. These statutes, however, are not evidentiary rules.