

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL LLOYD HOLDRIDGE,

Defendant-Appellant.

UNPUBLISHED

November 18, 1997

No. 190898

Kalamazoo Circuit

LC No. 95-000449-FH

Before: Saad, P.J., and O'Connell and Matuzak,* JJ.

PER CURIAM.

A jury convicted defendant of three counts of first-degree criminal sexual conduct (CSCI) with a person under 13 years of age, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and one count of extortion, MCL 750.213; MSA 28.410. The trial judge sentenced him to concurrent prison terms of ten to twenty years on the extortion conviction and twenty-two to forty years for each CSCI conviction. He appeals as of right. We affirm.

Defendant's convictions arise out of acts defendant engaged in with his step-daughter during the summer of 1994 when she was eight years old.

I.

Defendant first claims that there was insufficient evidence to sustain his conviction of first-degree criminal sexual conduct. We disagree.

For this case, the relevant essential elements of first-degree criminal sexual conduct are (1) sexual penetration with (2) a person under 13 years of age. MCL 750.520b(1)(a); MSA 28.788(2)(1)(a); *People v Reinhardt*, 167 Mich App 584, 598; 423 NW2d 275 (1988). Defendant contests the sufficiency of the evidence as to the element of sexual penetration. The victim testified that defendant penetrated her vagina with his finger on one occasion and with his penis on five occasions. Medical testimony presented evidence that the victim had been vaginally penetrated. Viewing this

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

evidence in the light most favorable to the prosecution, a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). There was sufficient evidence to sustain defendant's convictions for CSCI.

II.

Second, defendant claims that the victim's testimony should have been excluded because her first interview with a counselor regarding defendant's sexual assaults was not videotaped. Defendant asserts that because this interview was not videotaped, the complainant's testimony may have been the product of suggestive questioning and should be excluded as unreliable. Defendant did not object to the qualification of the child complainant at the time of trial, and so has failed to preserve this issue for appeal. *People v Grant*, 445 Mich 535, 547; 520 NW2d 123 (1994). Moreover, defendant has cited no Michigan authority requiring that interviews with sexual abuse victims be videotaped or audiotaped.¹ Similarly, none of the cases cited by defendant from other jurisdictions state a blanket rule that investigatory interviews of child sexual abuse victims must be recorded in order for that child to be allowed to testify at trial. The trial court questioned the victim before allowing her to testify and determined that she was competent. The trial judge did not abuse his discretion in finding the victim competent to testify. *People v Coddington*, 188 Mich App 584, 597; 483 NW2d 364 (1991).

III.

Third, defendant claims that the trial court erred by excluding certain evidence. We disagree. The evidence which defendant sought to admit was not relevant to the charges against defendant or the facts at issue in this case. Any inconsistencies in sexual abuse allegations made by the victim's sister were of no consequence to the charges involving the victim. The fact that the victim's great-grandmother had a bed with metal bars was equally irrelevant. The trial judge did not abuse his discretion by finding this evidence inadmissible. MRE 401, 402; *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995).

Defendant also argues that the trial court erred in refusing to admit evidence that the victim's paternal grandmother, Sharon Cole, initiated sexual abuse allegations relating to other children. Defendant is mistaken in arguing that the trial court refused to admit this information.

Defendant sought to have Mary Bombich, a social worker, testify about another interview she conducted about a sexual abuse complaint allegedly reported by Cole. Despite the prosecutor's objection, the trial judge allowed defense counsel to question Bombich whether this complaint was initiated by Cole and whether there were any similarities between the two reports. Bombich responded that she did not remember Cole's name being connected to the case. The trial court did not exclude the information.

IV.

Finally, defendant claims that he received ineffective assistance of counsel because his counsel should have objected to the qualification of the victim as a witness on the grounds that her initial

interview with a counselor about the sexual abuse was not videotaped. As discussed above, defendant has presented no Michigan authority requiring that the interview of a child sexual abuse victim be videotaped in order for the child to testify at trial. Failure to raise this novel legal argument did not deny defendant effective assistance of trial counsel. *People v Reed*, 453 Mich 685, 695; 556 NW2d 265 (1996).

Affirmed.

/s/ Henry William Saad

/s/ Peter D. O'Connell

/s/ Michael J. Matuzak

¹ In criminal sexual conduct cases where a child will testify, videotaping of investigatory interviews may be allowed in order to avoid excessive questioning of the child. However, the statute does not require that investigatory interviews be videotaped. MCL 600.2163a(5); MSA 27A.2163(1)(5).