STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WALTER LEE, JR.,

Defendant-Appellant.

UNPUBLISHED
February 6, 1998

No. 196293
Saginaw Circuit Court
LC No. 95-011240-FC

Before: Hood, P.J., and McDonald and White, JJ.

PER CURIAM.

Defendant was convicted of one count of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and two counts of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). Defendant's convictions stem from a series of alleged sexual encounters that occurred in 1995 between defendant and his then four-year-old son. Defendant was sentenced to concurrent terms of fifteen to thirty years' imprisonment for the CSC I conviction and ten to fifteen years' imprisonment for each CSC II conviction, and appeals as of right. We affirm.

On August 4, 1995, defendant was interviewed by a Michigan State Police trooper at the Bridgeport state police post about allegations that he had engaged in sexual contact with his son. The interview was videotaped without defendant's knowledge. Prior to trial, defendant moved to suppress the videotaped statement in which he incriminated himself. The trial court admitted the evidence and the videotape was played for the jury on the first day of defendant's trial. Defendant argues that the trial court erred when it failed to suppress the videotaped statement because the circumstances under which it was obtained violated the principles of *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966), and its progeny. Specifically, defendant asserts that the statement was the product of custodial interrogation and should have been excluded because he was neither advised of nor waived his *Miranda* rights.

"To determine whether the defendant was in custody at the time of the interrogation, the totality of the circumstances must be examined. *The key question is whether the defendant could have*

reasonably believed that he was not free to leave." *People v Marbury*, 151 Mich App 159, 162; 390 NW2d 659 (1986) (citation omitted) (emphasis added). In other words, "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Berkemer v McCarty*, 468 US 420, 421-422; 104 S Ct 3138; 82 L Ed 2d 317 (1984).

We review the trial court's ruling on a motion to suppress evidence for clear error. *People v McElhaney*, 215 Mich App 269, 273; 545 NW2d 18 (1996). We find no clear error in the trial court's determination not to suppress the videotape. A reasonable person in defendant's position would have understood that he was free to terminate the interview and leave at any time. We therefore conclude that defendant was not in custody at the time the videotape was made. We note that at the onset of the interview, the police trooper who questioned defendant specifically told him that he "was free to go anytime" he wanted. Further, there is no evidence that defendant was forced to come to the police post or was prevented from leaving once there. The videotape shows that defendant was never shackled or handcuffed. Moreover, it is not dispositive that the interview took place at a state police post and that defendant was suspected by the police of having committed CSC. *Oregon v Mathiason*, 429 US 492; 97 S Ct 711; 50 L Ed 2d 714 (1977); *People v Hill*, 429 Mich 382, 397-399; 415 NW2d 193 (1987). We also note that it is significant that defendant was allowed to leave the police station after the interview concluded. See *Mathiason*, *supra*, 429 US at 495.

Defendant next argues that there was insufficient evidence presented at trial to sustain the convictions. We disagree. In reviewing a defendant's challenge to the sufficiency of the evidence, we must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). To prove defendant guilty of CSC I, the prosecution had to prove beyond a reasonable doubt that defendant sexually penetrated his son's anus and that his son was under thirteen years of age at the time. MCL 750.520b(1)(a); MSA 28.788(2)(1)(a); CJI2d 20.1. Any penetration, however slight, is sufficient. CJI2d 20.1(2)(b). To prove defendant guilty of CSC II, the prosecution had to prove beyond a reasonable doubt that for sexual purposes defendant intentionally engaged in sexual contact with his son's buttocks and that his son was under thirteen years of age at the time. MCL 750.520c(1)(a); MSA 28.788(3)(1)(a); CJI2d 20.2.

It is undisputed that the victim was four years old at the time of the alleged sexual contact with defendant. Therefore, defendant's sufficiency argument rests on the existence and character of the sexual contact between him and his son. The great bulk of the evidence against defendant came from his own, properly admitted videotaped statement and from the testimony of the victim. The combination of the victim's testimony and defendant's statement, during which he eventually admitted to having engaged in sexual misconduct with the victim, was sufficient to sustain the convictions for both CSC I and CSC II. Although defendant testified at trial that he did not engage in any sexual contact with his son, and that he was pressured by the police into making the admissions heard on the videotape, the issue of his credibility was one for the jury. *Wolfe, supra* at 514-515. See also *Jackson v Virginia*, 443 US 307, 319; 99 S Ct 2781; 61 L Ed 2d 560 (1979), where the Court stated that it is "the responsibility of the trier of fact fairly to resolve conflicts in testimony.". Resolving the conflicts in the

trial testimony between defendant and his son was similarly a responsibility of the jury. *Id.* Based on our review of the record, we conclude that the evidence was sufficient.

Finally, defendant asserts that the sentences imposed violated the principle of proportionality. We disagree. Because defendant's sentences are within the sentencing guidelines recommended minimum sentence range, they are presumptively proportionate. *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996); *People v Piotrowski*, 211 Mich App 527, 532; 536 NW2d 293 (1995). "Where a sentence is within the guideline range, an abuse of sentencing discretion is shown upon a demonstration of 'unusual circumstances' that make the sentence disproportionate." *Piotrowski, supra*, at 532. Under the circumstances involved, we find that the sentences imposed were proportionate to the offenses and the offender. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Affirmed.

/s/ Harold Hood
/s/ Gary R. McDonald
/s/ Helene N. White