

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

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PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

January 15, 1999

Plaintiff-Appellee,

v

No. 204630

Kent Circuit Court

LARRY CONLEY,

LC No. 95-003663 FC

Defendant-Appellant.

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Before: Kelly, P.J., and Gribbs and Fitzgerald, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and was sentenced as an habitual offender, second offense, MCL 769.10; MSA 28.1082, to a prison term of eight to twenty-five years. He appeals as of right. We affirm.

Defendant contends that trial counsel was ineffective for failing to request that the jury be instructed on lesser included offenses. Defendant failed to move for a *Ginther*<sup>1</sup> hearing or a new trial in the trial court, thus limiting our review to errors apparent on the record. *People v Plummer*, 229 Mich App 293, 308; 581 NW2d 753 (1998).

A review of the record shows that defendant's conviction turned on the jury's assessment of the credibility of defendant and the victim. The victim testified that defendant sexually penetrated her, whereas defendant testified that he applied vaginal cream to the victim for medical purposes only and that the applicator for the cream may have slipped inside the victim's vagina. Thus, a conviction for first-degree CSC, which requires proof of sexual penetration of a person under the age of thirteen, *People v Hammons*, 210 Mich App 554, 557; 534 NW2d 183 (1995), hinged on the jury's determination of credibility. Because defendant's defense appears to have focused primarily on impugning the credibility of the victim, it appears that counsel's trial strategy was to destroy the victim's credibility with the hope that the jury would acquit on the first-degree CSC charge if given no other options. Under these circumstances, defendant has failed to overcome the presumption that trial counsel's decision to proceed only with the instruction for first-degree CSC was sound trial strategy. *Plummer, supra* at 307-308.

Defendant also submits that the evidence was insufficient evidence to support a first-degree CSC conviction. We disagree. Viewed in a light most favorable to the prosecution, *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997), the evidence revealed that defendant used his finger and penis to sexually penetrate the ten-year-old victim. The victim's testimony alone was sufficient to establish the elements of first-degree CSC. Any contrary testimony offered by defendant presented an issue of credibility to be resolved by the jury. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998).

Affirmed.

/s/ Michael J. Kelly

/s/ Roman S. Gribbs

/s/ E. Thomas Fitzgerald

<sup>1</sup> *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).