

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS MICHAEL OAKES,

Defendant-Appellant.

UNPUBLISHED
February 18, 2003

No. 235890
Tuscola Circuit Court
LC No. 00-007916-FC

Before: Markey, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Defendant appeals by right his conviction of one count of first degree criminal sexual conduct (CSC I), MCL 750.520b(1)(b)(i) (sexual penetration of a person between 13 and 16 of the same household), three counts of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(b)(i) (sexual contact with a person between 13 and 16 of the same household), one count of distributing sexually explicit matter to a minor, MCL 722.675, and eight counts of accosting or soliciting a child for immoral purposes, MCL 750.145a. Defendant was sentenced to 7 ½ to 20 years' imprisonment for CSC I, 5 to 15 years' imprisonment for each count of CSC II, one year imprisonment for distributing sexually explicit matter to a minor, and one year imprisonment for each count of accosting or soliciting a child for immoral purposes. We affirm.

Defendant claims there was insufficient evidence regarding the count of CSC II against the first victim and regarding five counts of accosting or soliciting the second victim for immoral purposes. This Court reviews a trial court's ruling on a motion for directed verdict de novo "to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt." *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

Moreover, this Court considers all the evidence available at the time the defense moved for a directed verdict. *People v Allay*, 171 Mich App 602, 605; 430 NW2d 794 (1988). This Court does not weigh the evidence or the credibility of witnesses; it merely decides whether "any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000); see also, *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748, amended 441 Mich 1201 (1992).

In relevant part, MCL 750.520c(1) provides:

(1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:

* * *

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

At the time of the offenses and when defendant was charged, “sexual contact” was 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)¹. “‘Intimate parts’ includes the primary genital area, groin, inner thigh, buttock, or breast of a human being.” MCL 750.520a(c).

CSC II is a general intent crime. *People v Piper*, 223 Mich App 642, 646; 567 NW2d 483 (1997). The prosecutor had to show that defendant intentionally touched the victim’s intimate parts or the clothing immediately covering that area and that the intentional touching could reasonably be construed as being for a sexual purpose. *Id.* at 646-647; MCL 750.520c(1); 750.520a(k). “The testimony of a victim need not be corroborated in prosecutions under sections [750.]520b to [750.]520g.” MCL 750.520h.

The victim testified that on two different occasions, he was riding in the car with defendant when defendant put his hand on the victim’s leg and began moving it up toward his groin. According to testimony, defendant’s hand went underneath the victim’s shorts up to his thighs. From testimony that defendant reached his “thighs,” a jury could conclude that defendant’s hand was between the victim’s legs, touching his inner thighs. The testimony also supported a conclusion that defendant’s hand touched the “clothing covering the immediate area of the victim’s . . . intimate parts.” MCL 750.520a(k).

Next, defendant argues that the trial court erred by refusing to grant his motion for directed verdict because there was insufficient evidence to support five of the counts of accosting or soliciting the second victim for immoral purposes. MCL 750.145a provides:

Any person who shall accost, entice, or solicit a child under the age of 16 years with intent to induce or force said child to commit an immoral act, or to submit to an act of sexual intercourse, or an act of gross indecency, or any other act of depravity or delinquency, or shall suggest to such child any of the

¹ MCL 750.520a(k) has been amended and renumbered as MCL 750.520a(l) effective March 28, 2001. 2000 PA 505.

aforementioned acts, shall on conviction thereof be deemed guilty of a misdemeanor, punishable by imprisonment in the county jail for not more than one (1) year.

In the plain language of MCL 750.145a, anyone who “suggests” that a child commit “an immoral act” or “submit to an act of sexual intercourse, or an act of gross indecency, or any other act of depravity or delinquency” violates the statute. MCL 750.145a; see, also, *People v Wheat*, 55 Mich App 559, 563-564; 223 NW2d 73 (1974). The accosting, enticing, soliciting, or suggesting must be done “with intent to induce or force” the child to commit the act. MCL 750.145a.

Three of the eight instances about which the victim testified resulted in defendant engaging in sexual activity with him. The fact that defendant followed through with his offers was sufficient to conclude that defendant acted with intent to induce or force the victim to engage in the sexual acts when he made other suggestions.

The remaining five incidents did not culminate in sexual activity. However, given the sexual nature of the suggestions and the fact that defendant did not hesitate to follow through on his other offers when he had the opportunity, a reasonable jury could conclude that defendant acted with the intent to induce the victim to engage in the suggested acts. See *Piper, supra* at 646-647.

Based on defendant’s persistence, his physical actions, and his demonstrated propensity to follow through with his suggestions, a reasonable jury could have concluded that defendant made his suggestions with the intent to follow through. Viewing the facts in the light most favorable to the prosecution, sufficient evidence existed to allow a rational trier of fact to conclude that the elements of the crimes were met beyond a reasonable doubt. *Nowack, supra*.

Last, there is no record support for defendant’s contention that the jury sent a note to the judge asking if the accosting and soliciting counts were related to specific instances, and that this demonstrated that the jury was so confused that it rendered guilty verdicts on all counts. Moreover, defendant waived this issue when he failed to raise it in his statement of questions presented. MCR 7.212(C)(5).

We affirm.

/s/ Jane E. Markey
/s/ Michael R. Smolenski
/s/ Patrick M. Meter