

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GORDON RAY RAATZ,

Defendant-Appellant.

UNPUBLISHED

October 30, 2001

No. 224290

Ingham Circuit Court

LC No. 99-075059-FH

Before: Doctoroff, P.J., and Wilder and Chad C. Schmucker*, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of one count of criminal sexual conduct in the third degree (CSC III), MCL 750.520d(1)(a), and one count of criminal sexual conduct in the fourth degree (CSC IV), MCL 750.520e(1)(a), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged with CSC III and CSC IV in connection with incidents alleged to have occurred in 1994 when complainant was thirteen years old. The information stated that because defendant had a prior conviction of criminal sexual conduct in the second degree (CSC II), MCL 750.520c, he was subject to a mandatory minimum sentence of five years upon conviction. MCL 750.520f. Complainant testified that in the summer of 1994 she spent several nights in defendant's home when she worked as a babysitter for defendant's daughter. She alleged that on several occasions defendant fondled her breasts and penetrated her vagina with his finger. Complainant indicated that she pretended to be sleeping during the incidents. She acknowledged that she did not report the alleged incidents to anyone for several years, and that on previous occasions she stated that the incidents occurred in 1995 or 1996. Defendant testified that he underwent back surgery in May, 1994, and that in the summer of that year he was physically incapable of performing the acts alleged by complainant.

The jury found defendant guilty as charged. The trial court sentenced defendant as a second habitual offender to concurrent prison terms of eight to twenty-two and one-half years and one year, four months to three years, with credit for thirty-six days, for the convictions of CSC III and CSC IV, respectively. MCL 769.10.

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

The habitual offender statutes, MCL 769.10 *et seq.*, are designed to deter repeat offenders through sentence enhancement. *People v Martin*, 209 Mich App 362, 363-364; 531 NW2d 755 (1995). A prosecutor must file a notice of intent to seek an enhanced sentence within twenty-one days of the arraignment or the filing of the underlying charge. MCL 769.13(1). The failure to timely file a notice precludes pursuit of an enhanced sentence. *People v Bollinger*, 224 Mich App 491, 492-493; 569 NW2d 646 (1997). Failure to timely file a proof of service of the notice can be harmless error. *People v Walker*, 234 Mich App 299, 314; 593 NW2d 673 (1999).

Defendant argues that the enhancement of his maximum prison terms was invalid because the prosecutor failed to file a notice of intent to seek enhanced sentences under MCL 769.10. We disagree. This issue presents a question of law, which we review *de novo*. *People v Harris*, 224 Mich App 597, 599; 569 NW2d 525 (1997). A pretrial statement signed by defendant, defense counsel, and the prosecutor, and adopted by the trial court, indicated that the prosecution intended to seek an enhanced sentence based on defendant's prior conviction of CSC II. The statement was filed with the court within twenty-one days of defendant's arraignment, as required. MCL 769.13(1). The proof of service was not timely filed; we deem that error harmless in light of the fact that defendant and defense counsel had notice of the prosecution's intent to seek an enhanced sentence. *Walker, supra*. The reference to the prior conviction in the presentence report sufficiently established the existence of the conviction. *People v Green*, 228 Mich App 684, 700; 580 NW2d 444 (1998). The trial court properly enhanced defendant's maximum terms pursuant to MCL 769.10. The decision to do so did not constitute an abuse of discretion. *People v Alexander*, 234 Mich App 665, 673; 599 NW2d 749 (1999).

In reviewing a sufficiency of the evidence question, we view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the offense were proven beyond a reasonable doubt. We do not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992); *People v Warren*, 228 Mich App 336, 343; 578 NW2d 692 (1998), modified 462 Mich 415; 615 NW2d 691 (2000). A trier of fact may make reasonable inferences from evidence in the record, but may not make inferences completely unsupported by any direct or circumstantial evidence. *People v Vaughn*, 186 Mich App 376, 379-380; 465 NW2d 365 (1990).

A person is guilty of CSC III if he engages in sexual penetration with another person who is at least thirteen years of age but less than sixteen years of age. MCL 750.520d(1)(a). A person is guilty of CSC IV if he engages in sexual contact with another person who is at least thirteen years of age but less than sixteen years of age, and the actor is five or more years older than the other person. MCL 750.520e(1)(a). Sexual contact constitutes the intentional touching of the victim's or actor's intimate parts if the touching can "reasonably be construed as being for the purpose of sexual arousal or gratification." MCL 750.520a(k); *People v Piper*, 223 Mich App 642, 645; 567 NW2d 483 (1997).

Defendant argues that the evidence was insufficient to support his convictions. We disagree and affirm those convictions. The undisputed evidence showed that complainant was thirteen years old when the charged incidents occurred, and that defendant was five or more years older than complainant. The jury was entitled to believe complainant's testimony that defendant penetrated her vagina with his finger and touched her breasts, notwithstanding the fact that complainant was somewhat inconsistent regarding the dates of the alleged offenses. *Wolfe*,

supra. Furthermore, given the circumstances under which the charged conduct occurred, the jury could reasonably infer that defendant engaged in sexual contact with complainant for the purpose of sexual arousal or gratification. MCL 750.520a(k); *Vaughn, supra*. No corroboration of complainant's testimony was required. MCL 750.520h. The evidence, viewed in a light most favorable to the prosecution, was sufficient to support defendant's convictions. MCL 750.520d(1)(a); MCL 750.520e(1)(a); *Wolfe, supra*.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Kurtis T. Wilder
/s/ Chad C. Schmucker