

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REVNELL COUCH, JR.,

Defendant-Appellant.

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UNPUBLISHED

September 16, 2003

No. 240836

Wayne Circuit Court

LC No. 01-004207

Before: Whitbeck, C.J., and O’Connell and Cooper, JJ.

PER CURIAM.

A jury convicted defendant Revnell Couch, Jr., of three counts of third-degree criminal sexual conduct (CSC).<sup>1</sup> Couch appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

This case concerns events that occurred on March 13, 2001. That morning, the fifteen-year-old complainant was dropped off at school by his mother but, after being told that he had been expelled for the day, he called his mother who told him to take the bus home. Rather than go home, however, the complainant went to the library, and then got back on the bus and rode it to the end of the line. According to the complainant’s trial testimony, when he got off the bus, he was approached by Couch, who asked if he was lost. The complainant responded that he was not lost, but was just “going through some stuff at home.” Couch then invited the complainant to attend a skating party with him, and stated that he had seen the complainant before at Detroit Roller Wheels, a local skating rink. The complainant got into Couch’s car and asked if Couch was going to take him home, to which Couch responded that he would, but had to do something at his apartment first.

When they arrived at Couch’s apartment, Couch told the complainant to sit down in the bedroom, and then asked if he wanted a “B-J,” which is slang for “blow job” or fellatio. When the complainant did not respond, Couch asked him to pull down his pants and underwear, and then proceeded to perform fellatio. The complainant testified that he ejaculated into Couch’s mouth. Shortly thereafter, the phone rang, and the complainant overheard Couch tell the caller that he “had a good one over here,” and asked if the caller was coming over. After hanging up,

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<sup>1</sup> MCL 750.520d(a) (penetration of a person over thirteen and under sixteen years of age).

Couch told the complainant that he was “about to get paid,” and that his friend, a manager at Detroit Edison, was on his way to the apartment. Telephone records introduced at trial confirmed that a nearly three-minute call was made from Detroit Edison to Couch’s apartment at 3:39 p.m. on the day in question. When Couch’s friend arrived, he performed fellatio on the complainant twice, and then gave him thirty dollars, ten of which Couch took. The complainant described Couch’s friend as a short, heavy-set white man.

After Couch’s friend left, Couch drove the complainant to see an older woman who Couch referred to as his mother, although he introduced the complainant to her as his cousin Mark. They drove the woman to a check-cashing business, and then took her home. The two then went to a bar, where Couch had a drink. Couch then took the complainant to another bar that was closed, but Couch opened the door with a key and had another drink, by which time it had become dark outside.

After this, Couch took the complainant back to his apartment, where he again performed fellatio on the complainant. Couch then bent the complainant over and attempted to insert his penis in the complainant’s anus. When this failed, Couch put lotion on his penis and “in” the complainant’s “behind” and “tried to force” it in, but could not. Couch then went into the bathroom, at which point the complainant took his things, left the apartment, and went to nearby Henry Ford Hospital, where he told a security guard that he had been raped.

The complainant was examined by a doctor, the results of which were not offered into evidence at trial. The complainant then talked to two sets of police officers and gave them an account of the incident that had some inconsistencies with the account he gave at trial, such as telling the police that as many as twelve instances of oral sex had occurred and omitting any mention of being taken to two bars. After hearing about the incident with Couch’s friend, the officers asked for the \$20 he got from that individual, and the complainant gave it to them.

The security guard called the complainant’s mother, who picked the complainant up from the hospital. The two then drove to Couch’s apartment building, where they wrote down the license plate number from Couch’s car and reported it to the police. Officer John Jenkins, who was in charge of the investigation, left his card at Couch’s apartment, and Couch voluntarily came to the police station at Jenkins’ request.

Couch told Jenkins that he had found the complainant on the street crying, and recognized him from the skating rink where he brought his seven-year-old son. The complainant told Couch he had been kicked out of school, and was crying because his mother was going to beat him and would not let him drive the new car he claimed she had bought him. Couch said that he offered the complainant a ride, and then took him out for something to eat. Although Couch initially told Jenkins that they spent one hour together, he then stated that they were together from 9:00 a.m. until 10:00 p.m. Couch said they watched television and played with his son’s remote-control car, and then took the woman to the check-cashing establishment. Couch stated that the complainant left his apartment while he was in the bathroom. Couch denied having any sexual contact with the complainant, and denied knowing any white men named “Jim,” apparently the name of his friend. Couch did not testify at trial.

The complainant’s mother testified that she had not bought her son a car. She explained that the complainant sometimes did not tell the truth. She further testified that the complainant was on medication for attention deficit hyperactivity disorder, and that he had no more than five dollars when he left the house on the morning in question.

During closing arguments, the prosecutor made the following statement, without objection from defense counsel:

People who do these things to young kids, whether they're boys or girls, they're called pedophiles. That's the technical term for this. And you know what—where did all of this begin?

Well, if you filter through to Mr. Couch and to the kid, it began over at least at the skating rink where Mr. Couch saw and observed [the complainant].

The skating rinks are legitimate places to go. They are legitimate places to go for adults to skate, and they are also legitimate places to go for kids to skate. But kids are the parties that go to skating rinks the most.

And you know, if you analyze a skating rink correctly, a skating rink is a pedophile's paradise. Because if you're a pedophile and you're there at the skating rink and there's a whole lot of other young kids there, you get to look around. You get to see and observe.

And you know what—pedophiles have radar. Pedophiles don't pick the best and brightest of kids. They don't pick on kids there that are problem-free and where everything is okay in their life. They've got the radar to watch and to pick on the kids that have the problems, figure out which kids have the problems, and to pick on them.

And you know what, Mr. Couch saw [the complainant] there at least a couple of times at that skating rink and remembered him. And when he saw him again downtown, he saw him again, a young boy that Tuesday afternoon, Tuesday morning, fifteen or sixteen years of age, or fourteen or fifteen years of age, kids should be in school and he's not, he knew there was a problem, and he picked on him. He was alerted to, he remember him [sic] from seeing him at the skating rink, at the pedophile's paradise, and he went there, and he made the entrée to [the complainant]. So I ask you to think about that. They are good at picking on the kids that have the problems.

The jury convicted Couch on all three counts.

## II. Sufficiency Of The Evidence

### A. Standard Of Review

We review de novo challenges to the sufficiency of the evidence, taking the evidence in the light most favorable to the prosecutor and determining whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.<sup>2</sup>

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<sup>2</sup> *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

## B. The Element Of Penetration

Couch argues that there was insufficient evidence to support his conviction of the third count of CSC, which was predicated on anal rather than oral penetration. We disagree. Penetration is statutorily defined as “sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of another person’s body . . . .”<sup>3</sup> In this case, the complainant testified that Couch then bent him over and attempted to insert his penis in the complainant’s anus. The complainant testified that Couch then put lotion “*in my behind*” and “tried to force” his penis in.

A complainant’s testimony alone, even if uncorroborated, is sufficient evidence to establish a defendant’s guilt of CSC beyond a reasonable doubt.<sup>4</sup> Whether the complainant’s testimony was credible was a matter for the factfinder, not this Court, to determine.<sup>5</sup> Viewing the complainant’s testimony in a light most favorable to the prosecution, we conclude that a rational trier of fact could find that the penetration element of CSC was proven beyond a reasonable doubt.<sup>6</sup>

## III. Prosecutorial Misconduct

### A. Standard Of Review

We review *de novo* allegations of prosecutorial misconduct while reviewing the trial court’s factual findings for clear error.<sup>7</sup> Because no objection was made to the challenged remarks, we will reverse only for plain error, placing the burden on the defendant to show that error occurred, that the error was clear or obvious, and that the plain error affected his substantial rights.<sup>8</sup> Moreover, if a curative instruction could have alleviated the prejudicial effect of the challenged remarks, error requiring reversal did not occur.<sup>9</sup>

### B. Comments On Pedophilia

Couch argues that the prosecutor’s closing-argument references to the behavior of pedophiles were not supported by the evidence, and were therefore improper. The prosecutor stated that people who “do these things to young kids” are pedophiles; that pedophiles frequent areas that are also frequented by children, such as skating rinks; and that pedophiles have “radar” that allows them to concentrate their attentions on troubled children.

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<sup>3</sup> MCL 750.520a(o); *People v Conway*, \_\_\_ Mich \_\_\_; 666 NW2d 185 (2003).

<sup>4</sup> See MCL 750.520h; *People v Lemmon*, 456 Mich 625, 642 n 22; 576 NW2d 129 (1998).

<sup>5</sup> *Lemmon*, *supra* at 646-647; *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999).

<sup>6</sup> *Johnson*, *supra* at 723; *Herndon*, *supra* at 415.

<sup>7</sup> *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001).

<sup>8</sup> *People v Aldrich*, 246 Mich App 101, 110; 631 NW2d 67 (2001), citing *People v Carines*, 460 Mich 750, 752-753, 764; 597 NW2d 130 (1999).

<sup>9</sup> *People v Callon*, 256 Mich App 312, 329-330; 662 NW2d 501 (2003).

Although prosecutors generally have great latitude regarding their conduct and arguments,<sup>10</sup> they may not make a statement of fact to the jury that is unsupported by the evidence.<sup>11</sup> In this case, the prosecutor's statements of fact regarding the typical behavior of pedophiles were not supported by any expert testimony or other evidence, nor were there any evidence that Couch himself had been diagnosed as a pedophile.

While we agree that the prosecutor's references to the behavioral characteristics of pedophiles were improper, they do not, however, constitute plain error requiring reversal. In this case, the jury heard Couch's explanation to the investigating officer that he occasionally went to the skating rink because he had a seven-year-old son, which mitigated the prejudice arising from the prosecutor's implication that Couch went there because he was a pedophile. Moreover, the prejudicial effect of the remarks could have been alleviated with a curative instruction.<sup>12</sup> Because Couch has not demonstrated that the prosecutor's remarks constituted plain error affecting his substantial rights, no error requiring reversal occurred.<sup>13</sup>

Affirmed.

/s/ William C. Whitbeck  
/s/ Peter D. O'Connell  
/s/ Jessica R. Cooper

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<sup>10</sup> See *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995).

<sup>11</sup> *People v Stanaway*, 446 Mich 643, 686; 521 NW2d 557 (1994); *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000).

<sup>12</sup> See *Callon*, *supra* at 329-330.

<sup>13</sup> *Aldrich*, *supra* at 110, citing *Carines*, *supra* at 752-753, 764.