

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID CHARLES BROCKITT,

Defendant-Appellant.

UNPUBLISHED
November 7, 2006

No. 264710
St. Clair Circuit Court
LC No. 05-000158-FH

Before: Fort Hood, P.J., and Murray and Donofrio, JJ.

MEMORANDUM.

Defendant was convicted by a jury of accosting a child for immoral purposes, MCL 750.145a. He was sentenced as a second habitual offender, MCL 769.10, to two to six years in prison. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that MCL 750.145a is unconstitutionally vague. He asserts that one would understand the statute to proscribe attempting to get a child to engage in prostitution or a sexual act but, beyond that, one would have to guess at what was proscribed. Further, it appears defendant is arguing that the jury may have concluded that he did not encourage complainant to engage in prostitution or sex, but did encourage him to engage in an unspecified “other act of depravity,” which he asserts would be too vague to determine what was proscribed.

In *People v Newton*, 257 Mich App 61, 66; 665 NW2d 504 (2003) (citations omitted), this Court held:

When a defendant's vagueness challenge does not implicate First Amendment freedoms, the constitutionality of the statute in question must be examined in light of the particular facts at hand without concern for the hypothetical rights of others. The proper inquiry is not whether the statute may be susceptible to impermissible interpretations, but whether the statute is vague as applied to the conduct allegedly proscribed in this case.

The statute clearly proscribed “suggest[ing] to [a] child” that the 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. . . .” To the extent the jury accepted complainant’s assertion that asking, “Do you want to get freaky?” was “just something you say” when you want to have sex, the jury could conclude that defendant had suggested to complainant that he engage

in sex. Regardless of whether other terms in the statute might be susceptible to a vagueness challenge, the statute clearly proscribes suggesting to a child under the age of 16 years of age that he engage in sex. Moreover, regardless of whether the term “act of depravity” might be vague as applied to some conduct, engaging in a sexual act with a 12-year-old boy would constitute an “act of depravity.” Thus, suggesting this to complainant was a violation of the act and, as applied, the statute cannot be regarded as unconstitutionally vague.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Christopher M. Murray
/s/ Pat M. Donofrio