

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

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
October 9, 2012

v

RICHARD HAROLD-WARD JOHNSON,  
  
Defendant-Appellant.

No. 307460  
Kent Circuit Court  
LC No. 11-005509-FH

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Before: SAAD, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Defendant Richard Harold-Ward Johnson appeals as of right his convictions of two counts of fourth-degree criminal sexual conduct (CSC IV)<sup>1</sup> following a jury trial. We affirm.

I. FACTS

Johnson was a friend of the complainant's stepfather, Robert Heiss, with whom the complainant and her mother lived. The complainant testified that in December 2010, Johnson was sitting in the living room of her residence as she walked through it. The complainant testified that as she walked past Johnson, he stood and grabbed her from behind, and placed one arm around her waist and his other arm around her shoulders. Johnson squeezed her breast with one hand, touched her buttocks, and attempted to touch her between her legs. The complainant testified that she was able to get free, but that she did not scream because she was afraid and did not know what to do. She testified that she told her mother about the incident the next morning.

Heiss testified that he spoke with Johnson the next day, and told Johnson to "keep his hands off" the complainant. Heiss testified that Johnson responded "[o]kay" and did not deny that the incident occurred. The complainant testified that Johnson continued to visit Heiss and her mother, helped her with her homework, and helped her look for a job.

Joseph Butler, a family friend, testified that in March 2011, he was at the complainant's residence. He testified that he observed Johnson "playfully smack[]" the complainant on the

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<sup>1</sup> MCL 750.520e(1)(b).

buttocks when she walked past him. Butler testified that he was concerned about the incident, and informed the complainant's mother later that day or the next day.

The complainant testified that in March 2011, Johnson approached her from behind while she was in the kitchen, grabbed her around the waist and shoulders, squeezed her breast, and touched her vaginal area. She testified Johnson squeezed her tighter when she tried to escape, but that she was eventually able to free herself. The complainant informed her mother, but her mother did not call the police. The complainant testified that she did not want Johnson to touch her in that fashion. The complainant testified that her ex-boyfriend's mother later observed her crying at work, that she eventually told her ex-boyfriend's mother what happened, and her ex-boyfriend's mother called the police.

The jury found Johnson guilty of two counts of CSC IV. Though the judgment of sentence indicates that Johnson was convicted of sexual contact with a person less than 16 years of age, MCL 750.520e(1)(a), the parties agree that Johnson was charged with and convicted of sexual contact by force or coercion, MCL 750.520e(1)(b). The trial court sentenced Johnson to 45 days in jail. Johnson appeals.

## II. SUFFICIENCY OF THE EVIDENCE

### A. STANDARD OF REVIEW

A claim that the evidence was insufficient to convict a defendant invokes that defendant's constitutional right to due process of law.<sup>2</sup> This Court reviews *de novo* the sufficiency of the evidence on appeal.<sup>3</sup> When reviewing a challenge to the sufficiency of the evidence, we review the evidence in a light most favorable to the prosecutor to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt.<sup>4</sup>

### B. ELEMENTS AND LEGAL STANDARDS

A person commits CSC IV if that person "engages in sexual contact with another person and . . . [f]orce or coercion is used to accomplish the sexual contact."<sup>5</sup> A person engages in sexual contact if they touch the intimate parts of another person, and the touching "can be

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<sup>2</sup> *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748 (1992); see *In re Winship*, 397 US 358, 364; 90 S Ct 1068; 25 L Ed 2d 368 (1970).

<sup>3</sup> *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

<sup>4</sup> *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005); *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012).

<sup>5</sup> MCL 750.520e(1)(b).

reasonably construed as for the purposes of sexual arousal or gratification.”<sup>6</sup> A person’s intimate parts include his or her genital area, groin, buttocks, and breasts.<sup>7</sup>

### C. APPLYING THE STANDARDS

Johnson argues that the evidence was only sufficient to show that Johnson attempted to engage in sexual contact. We disagree.

In this context, an attempt is an unsuccessful effort to complete a criminal act.<sup>8</sup> Though the complainant testified that on the first occasion Johnson only tried to touch her genital area, she also testified that Johnson squeezed her breast. The complainant testified that on the second occasion, Johnson again squeezed her breast and touched her genital area. The breasts, buttocks, and genital area are all intimate parts.<sup>9</sup> Viewing this evidence in the light most favorable to the prosecutor, we conclude that the evidence sufficiently established that Johnson completed the sexual contact on both counts of CSC IV.

Johnson also argues that the evidence was insufficient to show that the contact was for sexual purposes, arguing that the evidence only established that Johnson and the complainant were playing or “horsing around.” However, minimal circumstantial evidence is sufficient to prove a defendant’s state of mind.<sup>10</sup> When reviewing the sufficiency of the evidence, we will not interfere with the trier of fact’s role to determine the weight of the evidence or the credibility of the witnesses.<sup>11</sup> Viewing the evidence in the light most favorable to the prosecution, we conclude that a juror could reasonably infer that Johnson touched the complainant for the purposes of sexual gratification.

We affirm.

/s/ Henry William Saad  
/s/ William C. Whitbeck  
/s/ Michael J. Kelly

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<sup>6</sup> MCL 750.520a(q).

<sup>7</sup> MCL 750.520a(e).

<sup>8</sup> *People v Williams*, 491 Mich 164, 175; 814 NW2d 270 (2012).

<sup>9</sup> MCL 750.520a(e).

<sup>10</sup> *People v Fennell*, 260 Mich App 261, 270-271; 677 NW2d 66 (2004).

<sup>11</sup> *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).