

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

TROY ANTHONY BARLOW,

Defendant-Appellant.

---

UNPUBLISHED  
September 11, 2003

No. 239038  
Calhoun Circuit Court  
LC No. 01-002179-FH

Before: Meter, P.J., and Talbot and Borrello, J.J.

PER CURIAM.

Following a jury trial, defendant was convicted of fourth-degree criminal sexual conduct, MCL 570.520e(1)(b). He was sentenced to a term of twenty-four to forty-eight months' imprisonment. Defendant appeals as of right, arguing that the evidence was insufficient for the conviction. We affirm.

In a criminal case, due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). This Court views the evidence de novo in the 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. *Id.*

Viewed in the light most favorable to the prosecution, the evidence presented at trial is as follows. The seventeen-year old complainant accompanied her friend, Dawn Marty, to a party. Marty and the complainant left the party to drive defendant, whom they had just met and who was without a car, to his apartment. Defendant invited them into the communal kitchen area of his apartment complex. The complainant consumed half a cooler of wine. Two men came to the apartment building looking for another tenant and defendant invited them to meet his "female friends." The complainant next remembered that she was with defendant and Marty in the bathroom where defendant "was trying to grope" at her and he touched her breast underneath her shirt. The complainant stepped back but did not leave because Marty was standing against the door, watching. The complainant did not tell defendant to stop or express any words to that effect. When defendant attempted to touch Marty, Marty left the bathroom and the complainant followed her to the kitchen.

Defendant gave Marty some money to purchase dinner for her and the complainant. The complainant wanted to leave with Marty, but Marty told her to stay. The next thing the complainant remembered was being in the bathroom with defendant, who told her to get

undressed and come to the kitchen area. The complainant was afraid that defendant would hurt her, so she walked naked to defendant and the two men in the kitchen. The three men laughed and smirked at her and defendant told her to bend over a chair. The complainant testified that defendant “poked” her genital area as she was bent over the chair. The complainant testified that she did not tell defendant to stop; she stated that she was afraid and had tears in her eyes when she was bending over the chair. When Marty was heard returning to the apartment, defendant told the complainant to get dressed. The complainant ran to the bathroom. Shortly afterward, the complainant took Marty aside and told her what had happened and asked that they leave. Marty declined to leave. Instead, Marty and the two men left the complainant alone with defendant in the apartment. It is unclear from the record whether Marty left with the two men. The next thing the complainant remembered was that defendant raped her in his bedroom.

The jury acquitted defendant of the charge of third-degree criminal sexual conduct (sexual penetration using force or coercion) with respect to the alleged rape but found him guilty of fourth-degree criminal sexual conduct (sexual contact using force or coercion) with respect to the incidents in the bathroom and the kitchen. Defendant’s sole issue on appeal is that the evidence was insufficient to establish “force or coercion,” which is required to convict of fourth-degree criminal sexual conduct. Specifically, defendant argues that the complainant never showed unwillingness to participate in the sexual contacts in the bathroom or the kitchen, that there was no evidence to establish that he coerced or exercised any force on her and that the complainant’s fear was not reasonably foreseeable to him.

A person is guilty of criminal sexual conduct in the fourth degree if he engages in sexual contact with another person and “force or coercion” is used to accomplish the act. MCL 750.520e(1)(b). Force or coercion occurs “[w]hen the actor coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute that threat.” MCL 750.520e(1)(b)(ii).

In *People v Carlson*, 466 Mich 130, 140; 644 NW2d 704 (2002), our Supreme Court held that the “force” contemplated by the criminal sexual conduct statute must be so great as to overcome the complainant and allow the accomplishment of the sexual act when, absent that force, the act would not have occurred. Although *Carlson* discussed the force required for third-degree criminal sexual conduct (sexual penetration using force or coercion), the force or coercion elements are the same in the criminal sexual conduct statute. *Id.* at 136 n 4. See *People v Alter*, 255 Mich App 194; 203; 659 NW2d 667 (2003). *Carlson* held that “the prohibited ‘force’ encompasses the use of force against a victim to either induce the victim to submit to [the sexual contact] or to seize control of the victim in a manner to facilitate the accomplishment of [the sexual contact] without regard to the victim’s wishes.” *Carlson, supra* at 140.

In *People v Premo*, 213 Mich App 406; 540 NW2d 715 (1995), this Court held that “coercion” within the meaning of fourth-degree criminal sexual conduct “may be actual, direct, or positive, as where physical force is used to compel act against one’s will, or implied, legal or constructive, as where one party is constrained by subjugation to other to do what his free will would refuse.” *Id.* at 411 (quotation omitted). In *People v McGill*, 131 Mich App 465, 468-469; 346 NW2d 572 (1984), the defendant was convicted of fourth-degree criminal sexual conduct for luring a thirteen year-old girl into his car and then driving her to an isolated area where he fondled her. This Court ruled that the defendant’s actions were sufficient to create “a reasonable

fear of dangerous consequences” in the mind of the victim and thus amounted to coercion. *Id.* at 474.

In this case, defendant testified that the seventeen-year old complainant was timid. The complainant testified that she took a step back when defendant attempted to grope at her breast in the bathroom but that she could not leave because her friend, Marty, was in the way, watching the incident. This was sufficient evidence that defendant used actual force to accomplish sexual contact. Alternatively, the coercion element was satisfied when the complainant’s friend left her alone in the apartment with defendant and two men, all of whom were strangers to her, without transportation in a neighborhood where it was unsafe to walk home. Defendant was much older and physically larger than the complainant. At that time, the complainant did not know where the telephone was to summon help. Defendant testified that he was joking when he asked the complainant to take off her clothes and come to the kitchen naked and that he was surprised when the complainant did so even though she did not know the two other men. However, he and the two men laughed and smirked at the complainant and defendant told her to bend over a chair and he proceeded to touch her genital area.

We conclude that the complainant’s fear was reasonable given the vulnerable position of a young and timid girl left behind in an apartment with three adult men and with no means to safely leave. Although defendant testified that the sexual encounters were consensual and that the complainant was not timid, but appeared to be tipsy, when she came to the kitchen naked, we do not interfere with the jury’s role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748; amended 441 Mich 1201 (1992). It is for the trier of fact rather than this Court to determine what inferences can be fairly drawn from the evidence and to determine the weight to be accorded to the inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). From the above, the evidence was sufficient to meet the “force or coercion” elements for the conviction.

Affirmed.

/s/ Patrick M. Meter  
/s/ Michael J. Talbot  
/s/ Stephen L. Borrello