

STATE OF MICHIGAN
COURT OF APPEALS

In re MATTHEW EDWARD CRAVEN, Minor.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee

v

MATTHEW EDWARD CRAVEN,

Respondent-Appellant.

UNPUBLISHED

June 22, 2006

No. 260511

Wayne Circuit Court

Family Division

LC No. 02-408961-DL

Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

Respondent appeals as of right from an order adjudicating him guilty of fourth-degree criminal sexual conduct (CSC IV), MCL 750.520e, as a juvenile offense. The order was entered following a jury trial. We affirm respondent's CSC IV adjudication, but remand for correction of the order of disposition being appealed. This appeal is being decided without oral argument under MCR 7.214(E).

Respondent first argues that his conviction was improper because the order of disposition reflecting his adjudication indicates that he committed CSC IV in violation of MCL 750.520e(1)(a), which is based on the ages of the actor and the victim, and that he could not have violated that provision because he and the complainant were less than one year apart in age. It is true that the order of disposition incorrectly indicates that respondent was adjudicated of CSC IV based on a violation of MCL 750.520e(1)(a). However, it is apparent that this was the result of a mere clerical error that does not provide a basis for disturbing respondent's CSC IV adjudication, because the trial court's instruction on the elements of CSC IV to the jury was based on MCL 750.520e(1)(b), i.e., sexual contact by force or coercion. Thus, the only relief warranted based on the clerical error in the order of disposition is a remand to the trial court so that it can amend the order of disposition to correctly indicate that respondent's CSC IV adjudication was based on a violation of MCL 750.520e(1)(b). See MCR 7.216(A)(7) (granting this Court authority to "enter any judgment or order or grant further or different relief as the case may require"); see also *Central Cartage Co v Fewless*, 232 Mich App 517, 535-536; 591 NW2d 422 (1998) (remanding case to correct judgment to accurately reflect trial court's decision).

Respondent also argues that there was insufficient evidence to support his CSC IV adjudication; specifically, he argues that there was no evidence of force or coercion. We disagree. In reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution to determine whether any rational fact-finder could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Guthrie*, 262 Mich App 416, 418; 686 NW2d 767 (2004).

By the plain language of MCL 750.520e(1)(b), CSC IV as charged in this case consists of a person engaging in sexual contact with another person with force or coercion being used to accomplish the sexual contact. Thus, in this case, the prosecution was required to present evidence (1) that respondent engaged in sexual contact with the complainant and (2) that force or coercion was used to accomplish the sexual contact.

Regarding whether there was sufficient evidence that respondent engaged in sexual contact with the complainant, she testified that during the first incident he touched her buttocks and that in the second incident he touched her breast for a couple of seconds over the top of her clothing. Sexual contact is statutorily defined for purposes of the CSC statutes as including

the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

- (i) Revenge.
- (ii) To inflict humiliation.
- (iii) Out of anger. [See former MCL 750.520a(n)¹.]

A person's "intimate parts" include the buttock and breast. See former MCL 750.520a(c).²

According to the complainant's testimony, respondent deliberately touched her buttocks during the first incident and her breast during the second incident for no legitimate purpose. This alone is sufficient to support a conclusion that each touching could reasonably be construed as being for the purpose of sexual arousal or gratification. Further, according to the complainant's testimony describing the first incident, respondent touched her buttocks after he passed gas in her face. From this, a reasonable fact-finder could conclude that respondent's first touching of the complainant's intimate parts was done in a sexual manner to inflict humiliation, given that it was immediately preceded by respondent directing a humiliating act at the complainant. Thus, there was sufficient evidence to support a conclusion that respondent engaged in sexual contact with the complainant.

¹ MCL 750.520a was amended recently, and the pertinent citation is now MCL 750.520a(o).

² The pertinent citation is now MCL 750.520a(d).

The question then becomes whether there was sufficient evidence that respondent accomplished the sexual contact by force or coercion. Critically, MCL 750.520e(1)(b)(v) defines force or coercion to include circumstances “[w]hen the actor achieves the sexual contact through concealment or by the element of surprise.” According to the complainant’s testimony, the first incident in which respondent touched her buttocks occurred after respondent passed gas in her face and she leaned to her side. Viewing this in the light most favorable to the prosecution, *Guthrie, supra* at 418, a fact-finder could properly conclude beyond a reasonable doubt that respondent accomplished the first sexual contact by virtue of the element of surprise that he created by his unusual act. With regard to the second incident, the complainant testified that respondent touched her breast as he was walking past her on the school bus. Because a student on a school bus would not normally expect another student to touch her breast in that situation, a fact-finder could also reasonably conclude that this second sexual contact was accomplished by surprise. Thus, there was sufficient evidence to support respondent’s CSC IV adjudication because there was evidence to support a conclusion beyond a reasonable doubt that respondent engaged in sexual contact with the complainant that was accomplished by the element of surprise.

Finally, respondent argues in effect that the conduct at issue should not be considered to constitute CSC IV because the adjudication may subject him to sex offender registration requirements. However, whether respondent’s CSC IV adjudication may entail such registration requirements is simply irrelevant to whether there was sufficient evidence that respondent committed CSC IV. Respondent’s argument in this regard amounts to an appeal to this Court to improperly conclude that there was insufficient evidence to support the CSC IV adjudication based on irrelevant policy considerations. We decline to do so.

We affirm respondent’s CSC IV adjudication, but remand this case to the trial court for correction of the order of disposition being appealed to properly reflect that respondent was convicted of CSC IV based on a violation of MCL 750.520e(1)(b). We do not retain jurisdiction.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Patrick M. Meter