

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARREN THORPE,

Defendant-Appellant.

UNPUBLISHED

January 24, 2008

No. 274263

Wayne Circuit Court

LC No. 06-006679-01

Before: Saad, C.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Defendant appeals his jury trial conviction of first-degree criminal sexual conduct (person is under 13 years of age) (CSC-1), MCL 750.520b(1)(a). The trial court sentenced defendant to five to ten years in prison. For the reasons set forth below, we affirm.

Defendant claims that the trial court erred in denying his motion for directed verdict because the prosecutor presented insufficient evidence to support his CSC-1 conviction.¹ The elements of CSC-1 are: (1) the defendant engaged in sexual penetration with another person; and (2) that other person is under 13 years of age. *People v Hammons*, 210 Mich App 554, 557; 534 NW2d 183 (1995); MCL 750.520b(1)(a). Defendant maintains that the prosecutor failed to present sufficient evidence that defendant engaged in sexual penetration with the victim. “‘Sexual penetration’ means 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

¹ When reviewing a trial court's decision on a motion for directed verdict, this Court reviews the record de novo to determine whether the evidence presented by the prosecutor, viewed in the light most favorable to the prosecutor, could persuade a rational trier of fact that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Aldrich*, 246 Mich App 101, 122-123; 631 NW2d 67 (2001), citing *People v Mayhew*, 236 Mich App 112, 124-125; 600 NW2d 370 (1999).

This Court reviews sufficiency of the evidence claims de novo. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). Therefore, we “must view the evidence in a light most favorable to the prosecution and determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt.” *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

anal openings of another person's body, but emission of semen is not required." *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005).

Defendant bases his argument on an incomplete portrayal of the record. The victim testified that she lived with defendant and that, when she and defendant were alone, defendant took her to his room and told her to lie on her back. The victim further testified that defendant pulled her pants and underclothes down. According to the victim, defendant then used the fingernail on his index finger to touch her genital area. Although she initially testified that defendant only touched the outside of her genital area, the victim later admitted that her testimony during defendant's preliminary examination was true—that defendant also touched the inside of her vagina and that the penetration was painful. This evidence was corroborated by the victim's examining doctor who testified that the victim reported to him that her mother's boyfriend "[p]ut his whole finger inside of the vagina and was putting it in and out." Additionally, the doctor testified that the victim's hymen orifice was enlarged to an extent that is consistent with penetration, and her hymen showed signs consistent with digital penetration. This evidence was sufficient for the jury to find beyond a reasonable doubt that defendant engaged in sexual penetration with the victim. Accordingly, we reject defendant's claim that the trial court erred when it denied his motion for directed verdict and we reject his claim that the prosecutor presented insufficient evidence to support his conviction.

Defendant also claims that the trial court violated his equal protection rights when it instructed the jury that the victim's testimony alone may be sufficient to convict defendant if the testimony proves guilt beyond a reasonable doubt. Defendant waived this issue because his attorney affirmatively approved the jury instructions. *People v Carter*, 462 Mich 206, 214-216; 612 NW2d 144 (2000). In any case, the court's instruction was proper and did not violate defendant's equal protection rights for the reasons already set forth by this Court in *People v McFall*, 224 Mich App 403, 413-414; 569 NW2d 828 (1997).

Affirmed.

/s/ Henry William Saad
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher