STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 24, 2009
v	No. 280954 Wayne Circuit Court
ERIC ROBERTSON, Defendant-Appellant.	LC No. 07-009296-01

Before: Jansen, P.J., and Meter and Fort Hood, JJ.

PER CURIAM.

Defendant was convicted, following a bench trial, of accosting a child for immoral purposes, MCL 750.145a, and was sentenced to three years' probation. He appeals as of right, and we affirm.

The victim, a fourteen-year old girl, was walking down the street with a friend. She saw a classmate, who had recently obtained his driver's permit, driving defendant's red mini van. Defendant was riding in the passenger seat, and the victim had met defendant on one prior occasion. The victim approached the vehicle to greet her classmate. Defendant told the victim to come to his side of the vehicle and to lean into the vehicle. Once there, defendant, in a lowered voice, asked the victim, "When can I get your phone number to hook up and have sex?" The victim advised defendant that she was fourteen years of age and was too young to have sex. Defendant reportedly responded that age had not stopped him before. He then asked the victim, "When are you going to let me lick in between your thighs?" The victim's friend testified that she overheard this comment made by defendant. The victim walked away from the vehicle, but felt violated and disgusted. The next day, she reported the incident to school officials, and the police were contacted.

Defendant testified that he was riding as a passenger in his van when he saw two girls standing on the corner waving at passing cars. The driver, defendant's neighbor, pulled the vehicle up to the corner where the girls were standing. Defendant denied making any sexually suggestive comments or any solicitations for sex to the victim. Rather, he told the victim that she was inappropriately dressed like a "ho," should not be standing on the corner, and should go home. Defendant also indicated that he would tell the victim's parents about how she was dressed and standing on the street corner. The victim "smacked her lips" and told defendant that he was not her father and could not talk to her like that.

Following a bench trial, defendant was convicted of accosting a minor, MCL 750.145a. The trial court held that the resolution of the case involved a credibility assessment of the victim and defendant and held that the victim's testimony was credible.[1] Defendant was sentenced to a term of probation.

Defendant first alleges that there was insufficient evidence to support his conviction because there was no evidence of accosting, enticing, or solicitation of a minor to engage in improper acts. Moreover, assuming defendant made the statement attributed to him by the victim, defendant submits that the statutory requirements were not satisfied because the words were spoken in the form of a question as opposed to "a command or statement or declarative sentence." We disagree. "This Court reviews de novo a challenge to the sufficiency of the evidence in a bench trial." *People v Lanzo Constr Co*, 272 Mich App 470, 473-474; 726 NW2d 746 (2006). The evidence is examined in a light most favorable to the prosecution to ascertain whether the trial court could have found the essential elements of the crime were proven beyond a reasonable doubt. *Id*. at 474. All conflicts in the evidence must be resolved in favor of the prosecution, and this Court will not interfere with the trier of fact's determination regarding the weight of the evidence or the credibility of the witnesses. *People v McRunels*, 237 Mich App 168, 181; 603 NW2d 95 (1999). When the resolution of the issue involves the credibility of diametrically opposed versions of events, the test of credibility lies where statute, case law, common law, and the constitution have reposed it, with the trier of fact. *People v Lemmon*, 456 Mich 625, 646-647; 576 NW2d 129 (1998).

Defendant was convicted of violating MCL 750.145a, which provides:

> A person who accosts, entices, or solicits a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age with the intent to induce or force that child or individual to commit an immoral act, to submit to an act of sexual intercourse or an act of gross indecency, or to any other act of depravity or delinquency, or who encourages a child less than 16 years of age, regardless of whether the person knows the individual is a child or knows the actual age of the child, or an individual whom he or she believes is a child less than 16 years of age to engage in any of those acts is guilty of a felony punishable by imprisonment for not more than 4 years or a fine of not more than $4,000.00 or both.

By statute, a defendant's commission of the crime of accosting a child for immoral purposes is contingent upon accosting, enticing, or soliciting a child under the age of 16 with the intent to induce or force that child to commit a sexual act. MCL 750.145a. This crime includes the element of urging or entreating. *People v Wheat*, 55 Mich App 559, 563-564; 223 NW2d 73

[1] The trial court acknowledged the testimony of the victim's friend as well as the testimony of the driver. The driver did not hear defendant make any sexually suggestive statement to the victim.

(1974) (construing a prior version of the statute in which the word "suggest" is used instead of "encourage").

Viewing the evidence in the light most favorable to the prosecution, *Lanzo, supra*, there was sufficient evidence to support defendant's conviction. Review of the evidence reveals that defendant told the victim to lean into the vehicle. At that time, defendant, in a low voice, propositioned the victim for sex by asking for her telephone number to arrange a meeting for that purpose. Moreover, after the victim told defendant that she was fourteen years old, defendant offered to perform an oral sexual act. After this exchange, the victim walked away.

The victim's testimony, deemed credible by the trier of fact, established that defendant accosted and entreated the victim by asking when he was going to have sex with her and when he could "lick in between her thighs." Accost is defined as "to confront boldly" or "to approach with a greeting, question, or remark." *Random House Webster's College Dictionary* (1995) at 9.[2] Here, defendant accosted the victim by posing these questions to her. Moreover, a proposal for sex, no matter what type of sex, and the request to lick in between a young girl's thighs constitutes immoral, grossly indecent, as well as depraved and delinquent acts, under the statute. Defendant's verbal request regarding when they were going to have sex demonstrates his intent to induce her into performing these acts. Finally, the victim testified she was 14 at the time of the incident, qualifying her as a child less than 16 years of age under the statute. The statute was designed to prevent the accosting and enticement of minors irrespective of whether that enticement comes in the form of a question or a command.

Additionally, defendant's argument that there was conflicting evidence at trial fails. While the testimony of the victim and defendant conflicted, the judge credited the victim's testimony. When presented with diametrically opposed versions of events, the resolution of the issue rests with the trier of fact, and we do not resolve the issue anew. *Lemmon*, *supra*; *Lanzo, supra*.

Next, defendant argues that MCL 750.145a is unconstitutionally vague because the phrase "immoral acts" and the term "encourage" do not provide fair notice of the conduct proscribed, give the trier of fact unlimited and unstructured discretion in determining whether an offense as occurred, and are overbroad, impinging on First Amendment protections. We disagree.

Because this issue was not properly preserved by a constitutional challenge before the trial court, the standard of review is plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *People v Sands*, 261 Mich App 158, 160; 680 NW2d 500 (2004). There is a presumption that a statute is constitutional, and this Court will construe it this way unless its unconstitutionality is "clearly apparent." *People v Hubbard (On Remand)*, 217 Mich App 459, 483-484; 552 NW2d 493 (1996). A statute can be unconstitutionally vague if it: (1) fails to provide fair notice to the public of the proscribed conduct, (2) gives the trier of

[2] When the legislature does not expressly define terms in a statute, it is appropriate to use a dictionary to construe those terms "in accordance with their ordinary and generally accepted meanings." *People v Morey*, 461 Mich 325, 330-331; 603 NW2d 250 (1999).

fact unstructured and unlimited discretion to determine if an offense has been committed, or (3) is overbroad and impinges on First Amendment rights. *People v Nichols*, 262 Mich App 408, 409-410; 686 NW2d 502 (2004).

To evaluate a vagueness challenge, a court must examine the entire text of the statute and give the words of the statute their ordinary meanings. *People v Hrlic*, 277 Mich App 260, 263; 744 NW2d 221 (2007). Vagueness challenges must be considered in light of the facts at issue. *Id*. "A statute is unconstitutionally vague if persons of ordinary intelligence must necessarily guess at its meaning." *People v Pierce*, 272 Mich App 394, 398-399; 725 NW2d 691 (2006). To be sufficiently definite, the meaning of the statutory terms must be fairly ascertained by reference to judicial interpretations, the common law, dictionaries, treatises, or the commonly accepted meanings of words. *Hrlic, supra*.

The plain language of the statute protects children from being induced into criminal acts. The language of the statute includes prohibiting individuals from inducing or forcing a child to engage in acts of sexual intercourse or gross indecency. Within this context, including the phrases "immoral acts" and "acts of depravity and delinquency" merely indicate the statutory prohibition on encouraging or soliciting children from being involved in other criminal acts, particularly criminal sexual acts. The term "encourage" is another manner in which inducing criminal activity by a child is prohibited. This plain and contextual reading of the statute makes it clear that there is fair notice of the proscribed conduct and that there is not unlimited discretion in deciding whether an offense has been committed. Moreover, as applied to defendant, no reasonable person of ordinary intelligence would have to guess whether asking a 14-year-old female for her phone number in order to have sex and requesting or offering to lick her between her thighs is moral conduct under the statute.

A statute is overbroad when it precludes or prohibits constitutionally protected conduct in addition to conduct or behavior that it may legitimately regulate. See *People v McCumby*, 130 Mich App 710, 714-715; 344 NW2d 338 (1983). Applying the overbreadth doctrine in the context of First Amendment freedoms, the rules of standing are relaxed, and a defendant may "challenge the constitutionality of a statute on the basis of the hypothetical application of the statute to third parties not before the court." *People v Rogers*, 249 Mich App 77, 95; 641 NW2d 595 (2001). Here, defendant argues that the statute regulates both speech and conduct. This means he must show that the overbreadth of the statute is both real and substantial. *Id*. at 96. In other words, defendant is required to demonstrate that there is a "'realistic danger that the statute itself will significantly compromise recognized First Amendment protections of parties not before the Court for it to be facially challenged on overbreadth grounds.'" *Id*. at 96, quoting *Los Angeles City Council v Taxpayers for Vincent*, 466 US 789, 801; 104 S Ct 2118; 80 L Ed 2d 772 (1984).

The plain reading of the statute reveals that it proscribes accosting or encouraging children for the purpose of inducing them to engage in criminal activity. This statute does not pose realistic dangers to First Amendment protections. Moreover, defendant's concerns about different religious understandings of what constitutes moral conduct and parents educating their children about sex do not come under the gambit of this statute because it is clearly aimed at criminal activity. It will have no impact on any of the activities included in defendant's hypothetical scenarios. Construing the statute in this way, MCL 750.145a is not facially

overbroad. Defendant's constitutional challenge to MCL 750.145a is without merit.

Affirmed.

/s/ Kathleen Jansen
/s/ Patrick M. Meter
/s/ Karen M. Fort Hood