

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERNEST W. WALTON,

Defendant-Appellant.

UNPUBLISHED
December 8, 1998

No. 203331
Recorder's Court
LC No. 96-002185

Before: Murphy, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions after a jury trial of one count of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), two counts of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), and fleeing a police officer, MCL 750.479a; MSA 28.747(1). Defendant was sentenced to ten to twenty years for the first-degree criminal sexual conduct conviction, eight to fifteen years for each second-degree criminal sexual conduct conviction, and thirty days for the fleeing a police officer conviction. We affirm.

Defendant's sole argument on appeal is that the trial court erred by denying his motion for directed verdict regarding several first-degree criminal sexual conduct counts when there was insufficient evidence of penetration. When reviewing a trial court's ruling on a motion for directed verdict, this Court considers the evidence presented by the prosecutor up to the time the motion was made in the light most favorable to the prosecution and determines whether a rational trier of fact could find the essential elements of the charged crime were proved beyond a reasonable doubt. *People v Warren*, 228 Mich App 336, 345; 578 NW2d 692 (1998).

The elements of first-degree criminal sexual conduct are: (1) the actor engaged in sexual penetration with another person, and (2) that other person is under thirteen years of age. *People v Hack*, 219 Mich App 299, 303; 556 NW2d 187 (1996). MCL 750.520a(l); MSA 28.788(1)(l) defines "sexual penetration" as "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 anal openings of another person's body, but emission of semen is not required." This Court has held that

evidence of penetration of the labia majora was sufficient to sustain a finding of penetration of the genital opening under the statute. *People v Bristol*, 115 Mich App 236, 238; 320 NW2d 229 (1981).

In the instant case, the victim testified that when defendant touched his “privacy” to hers, it hurt where she peed. The victim also testified that on two other occasions at defendant’s house, he had put his privacy on her privacy and that when he did, it hurt where she peed. The fact that the victim experienced pain on each of these occasions is circumstantial evidence that defendant’s penis penetrated her genital area. Moreover, two Detroit police officers witnessed defendant with his pants down and the victim on his lap with her buttocks exposed. One officer witnessed defendant’s genitals exposed. The victim also told the police officers immediately after they apprehended defendant that he had “rubbed his privacy against her privacy.” This evidence, when viewed in the light most favorable to the prosecution, was sufficient evidence from which a rational trier of fact could have found beyond a reasonable doubt that defendant had penetrated the victim. Therefore, we conclude that the trial court properly denied defendant’s motion for directed verdict.

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage