

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

PATRICK JAY CONELY,

Defendant-Appellee.

UNPUBLISHED

February 8, 2005

No. 250576

Livingston Circuit Court

LC No. 02-013106-AR

Before: Hoekstra, P.J., and Cavanagh and Borrello, JJ.

MEMORANDUM.

Plaintiff appeals by leave granted the decision of the circuit court reversing defendant's district court convictions for violating the Solid Waste Management Act, MCL 324.11501 *et seq.* We reverse. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On November 8, 2001, plaintiff filed a three-count complaint in 53rd District Court alleging that defendant disposed of waste in an area that was not licensed, he established a disposal area without obtaining a construction permit from the DNR, and he operated a disposal area without a license. After a bench trial, the district court found defendant guilty on all three counts. On appeal, the circuit court reversed the convictions, finding that there was no evidence presented concerning conditions on November 8, 2001, thus the evidence was insufficient to support the convictions.

In determining whether sufficient evidence has been presented to sustain a conviction, a reviewing court must view the evidence in a light most favorable to the prosecution, and determine whether any rational finder of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). The standard of review is deferential: a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

There was sufficient evidence to show that the violations existed. DEQ employees testified that they first went to the site on July 9, 2001, in response to a complaint forwarded by a local unit of government. They observed piles of solid waste in the center of the site, and salvage materials on the west and south sides of the site. When employees returned to the property in May 2002 to take environmental samples, the piles of solid waste were in similar locations and of similar size and some of the same material was in the same piles as before.

Defendant asserts that time is an element of the offense, and that plaintiff failed to present sufficient proof to establish that element, i.e., that the violations existed on the date charged. However, a variance between the time charged and the proofs is not fatal unless time is of the essence. *People v Taylor*, 185 Mich 1, 7-8; 460 NW2d 582 (1990). There is no indication that time is of the essence, or a material element of the offenses charged: violations of the Solid Waste Management Act. *Id.* Plaintiff presented evidence that the violations existed at the time of the first inspection, and that those violations continued. There was no evidence that the violations ever abated, thus defendant was not prejudiced by a variation in time between the charge and the proofs. The circuit court therefore erred in reversing defendant's convictions.

Reversed and remanded for reinstatement of the convictions. We do not retain jurisdiction.

/s/ Joel P. Hoekstra

/s/ Mark J. Cavanagh

/s/ Stephen L. Borrello