

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALFRED HARRIS, JR.,

Defendant-Appellant.

UNPUBLISHED

January 24, 2013

No. 308733

Saginaw Circuit Court

LC No. 10-034491-FC

Before: SAWYER, P.J., and MARKEY and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right from his August 2, 2011, jury trial convictions of eleven counts of first-degree criminal sexual conduct, MCL 750.520b, three counts of second-degree criminal sexual conduct, MCL 750.520c, and disseminating sexually explicit material to a minor, MCL 722.675. We affirm.

Defendant first argues that, because he was only a temporary guest at the time the abuse occurred, he was not a member of the complainant's household and the prosecution presented insufficient evidence to support defendant's convictions. Sufficiency of the evidence claims are reviewed de novo. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). We must determine whether the evidence when viewed in the light most favorable to the prosecution would allow a rational trier of fact to find that all of the elements of the charged crime were proven beyond a reasonable doubt. *Id.*

Under MCL 750.520b:

(1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exists:

* * *

(b) That other person is at least 13 but less than 16 years of age and any of the following:

(i) The actor is a member of the same household as the victim.

* * *

(iii) The actor is in a position of authority over the victim and used this authority to coerce the victim to submit.

The prosecution's theory in this case was based on the fact that the complainant was between 13 and 15 years of age, and he was a member of the same household as defendant. Here, uncontested evidence shows that the complainant was between 13 and 15 years old when the alleged acts occurred. In addition, under the circumstances, a reasonable juror could find that defendant was in the same household as the complainant. We disagree with defendant that his visit to the home was only a brief and chance visit, and thus defendant was not part of the complainant's "household." Here, the evidence showed that defendant did not have anywhere else to stay, so the complainant's stepfather invited defendant to stay in the home. Defendant stayed in the home approximately two months. While defendant was in the home, neither the complainant nor his stepfather believed defendant was staying anywhere else, and they both testified that defendant had clothes in the home. Defendant also ate some meals in the home. This was not a brief or chance visit.

Nor, contrary to defendant's assertion, was defendant required to be related to the complainant to reside in the same household as the complainant. See *People v Phillips*, 251 Mich App 100, 103-104; 649 NW2d 407 (2002); *People v Garrison*, 128 Mich App 640, 646-647; 341 NW2d 170 (1985). Rather, the applicable analysis becomes whether defendant could have become part of the "family unit" so as to allow the complainant to develop a sufficient "subordinating relationship" or "special relationship" with defendant. *Garrison*, 128 Mich at 646; *Phillips*, 251 Mich App at 104. Here, the facts support this finding. Not only did defendant live with the complainant's family, the complainant testified that defendant mentored a group called FAM, a group of boys 15 years old and older who had troubled pasts. The complainant testified that defendant was the oldest adult at the FAM parties and that defendant was like a father figure to the boys. Importantly, according to complainant, he joined FAM at defendant's request, and his relationship with defendant changed. The complainant maintained that the two then became closer and it was easier to talk more. This interaction, when coupled with the facts surrounding the complainant's "initiation" into FAM, and the fact that defendant stayed in the complainant's bedroom during at least part of defendant's time with the family, certainly supports an inference that defendant became sufficiently involved in the complainant's life to become part of the family. In other words, defendant was not just a person who slept on the couch. Taking the evidence as a whole and viewing it in a light most favorable to the prosecution we conclude that there was sufficient evidence to support the jury's conclusion that defendant and the complainant were part of the same household.

Defendant next argues that the trial court improperly allowed an expert witness to testify that the five-month reporting delay would be characteristic of a 14- or 15-year-old boy who had had a homosexual encounter with an older male. Defendant did not object to this testimony below, and thus we review this unpreserved error for plain error that affected defendant's substantial rights. *People v Metamora Water Serv, Inc*, 276 Mich App 376, 382; 741 NW2d 61 (2007); *People v Jones*, 468 Mich 345, 355; 662 NW2d 376 (2003). "To avoid forfeiture of an unpreserved, nonconstitutional plain error, the defendant bears the burden of establishing that: (1) error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected

substantial rights.” *Id.* Reversal is not warranted unless the plain error resulted in the conviction of an innocent person, or seriously affected the fairness, integrity, or public reputation of the proceedings. *Id.*

Here, defendant cannot show that he is entitled to relief due to error, if any, in the admission of this testimony. Defendant correctly notes that the case rested on the credibility of the complainant. However, other testimony supported his such that it was not simply a credibility contest between the complainant and defendant. The complainant testified that defendant performed oral sex on him at least ten times. He testified that defendant directed him to perform anal sex on defendant once. He testified that defendant touched his penis and rubbed it until he ejaculated twice. He testified that defendant used his hand to touch defendant’s penis on one occasion. The complainant’s mother and stepfather confirmed surrounding details, such as (1) how defendant’s sleeping arrangements shifted from the first floor couch to Maurice’s bed, (2) where and when Maurice reported the incidents, and (3) their whereabouts during the anal sex incident. Further another victim testified about FAM, defendant’s involvement in FAM, and the initiation method for FAM. This victim further testified to a similar incident of sexual abuse, where defendant allegedly rubbed his penis until he ejaculated. Thus, even without the expert witness’ testimony, there was more than sufficient evidence on the record to support the jury’s convictions. The challenged testimony may have helped explain the initial reporting delay; however, even had it not occurred, the jury was able to gauge the complainant’s credibility on the stand. We thus find that defendant’s substantial rights were not affected by the admission of the challenged testimony.

Affirmed.

/s/ David H. Sawyer

/s/ Jane E. Markey

/s/ Michael J. Kelly