

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LISA ANN HOFMAN,

Defendant-Appellant.

FOR PUBLICATION

September 23, 2021

9:05 a.m.

No. 355838

Crawford Circuit Court

LC No. 20-004577-FC

Before: RONAYNE KRAUSE, P.J., and BECKERING and BOONSTRA, JJ.

RONAYNE KRAUSE, P.J.

Defendant appeals by leave granted¹ the circuit court’s order denying her motion to dismiss her charge of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(b)(iv) (sexual penetration of a child at least 13 but less than 16 years of age by a teacher, substitute teacher, or administrator of the school or school district in which the victim is enrolled). We reverse and remand.

I. BACKGROUND

The facts pertinent to this appeal are not in dispute. Defendant was initially charged under MCL 750.520b(1)(b)(iv) with five counts of CSC-I arising from a sexual relationship she allegedly had from 2001 until 2004 with the complainant, a student at a school where defendant worked as a substitute teacher. However, “substitute teachers” were not included under the statute until it was amended by 2002 PA 714, which became effective in 2003. After holding the preliminary examination, the district court concluded that the complainant’s testimony did not support any possible charge under the pre-amendment version of MCL 750.520b, and the complainant’s testimony only supported one act of sexual penetration between the effective date of 2002 PA 714 and the date the relationship ended. The district court therefore dismissed four of the charged counts and bound defendant over for trial on the single remaining count of CSC-I. The prosecutor

¹ *People v Hofman*, unpublished order of the Court of Appeals, entered March 18, 2021 (Docket No. 255838).

filed an amended information specifying that the single remaining count of CSC-I occurred “on or about late 2003 – early 2004.”

In circuit court, defendant moved to dismiss the remaining charge. She argued that she had been a substitute teacher at the complainant’s school during the 2002-2003 school year, but thereafter she enrolled as a full-time student at a university and later worked as a substitute teacher at an entirely different school during the winter 2004 semester. She conceded that pursuant to *People v Lewis*, 302 Mich App 338, 344-346; 839 NW2d 37 (2013), the status of “substitute teacher” would ordinarily not lapse during a summer break, but she pointed out that, in contrast to *Lewis*, she had actually left her employment at the complainant’s school. The prosecution agreed that “[defendant] was no longer [the complainant’s] substitute teacher.” The prosecution argued that, because the alleged relationship started while defendant was the complainant’s substitute teacher, her status as his substitute teacher should be deemed to continue. The trial court denied defendant’s motion. It ruled that, under *Lewis*, “there is no requirement that the Defendant be acting as a substitute [teacher] when the charged assault occurred, so long as her status as a substitute allowed her access to the Complainant in order to engage in sexual penetration.” This appeal followed.

II. STANDARD OF REVIEW AND PRINCIPLES OF LAW

A trial court’s decision to deny a motion to dismiss is reviewed for abuse of discretion, and a “trial court necessarily abuses its discretion when it makes an error of law.” *People v Brown*, 330 Mich App 223, 229; 946 NW2d 852 (2019) (quotation marks and citation omitted). Legal questions, including “questions of statutory interpretation, are reviewed de novo.” *Id.*

This Court’s primary goal in construing a statute is to determine and give effect to the intent of the Legislature, turning first to the statutory language to ascertain that intent. In construing a statute, we interpret defined terms in accordance with their statutory definitions and undefined terms in accordance with their ordinary and generally accepted meanings. When statutory language is unambiguous, judicial construction is not required or permitted because the Legislature is presumed to have intended the meaning it plainly expressed. [*People v Campbell*, 329 Mich App 185, 193-194; 942 NW2d 51 (2019) (quotation marks and citations omitted; alteration removed).]

“Criminal statutes are to be strictly construed, and cannot be extended beyond their clear and obvious language.” *Lewis*, 302 Mich App at 342 (quotation marks and citation omitted). Moreover, “when a term is not defined in a statute, the dictionary definition of the term may be consulted or examined.” *Id.*

III. ANALYSIS

Defendant argues that the trial court erred by denying her motion to dismiss because she was no longer a substitute teacher in the complainant’s school district at the time of the alleged sexual penetration. Under the circumstances of this case, we agree.

Defendant was charged with CSC I, pursuant to MCL 750.520b, which provides in relevant part:

(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:

* * *

(iv) The actor is a teacher, substitute teacher, or administrator of the public school, nonpublic school, school district, or intermediate school district in which that other person is enrolled.

This Court has addressed substantively-identical language found in MCL 750.520d(1)(e)(i), and particularly the significance of the word “is.” *Lewis*, 302 Mich App at 343-347. This Court determined “that the Legislature intended to protect persons in a certain age group or with certain vulnerability who encounter an individual in a position of authority or supervision over those persons.” *Id.* at 346. It determined that the word “is” indicated that a defendant must hold the status of, in relevant part, a substitute teacher, but need not specifically be performing the role of substitute teaching. *Id.* at 345-346. This Court concluded that there was no “temporal requirement regarding the timing of the sexual penetration.” *Id.* at 345.

Consequently, if a sexual penetration by a substitute teacher occurs before school or after the school bell rings at the end of the day, or on a weekend, or during the summer, prosecution pursuant to MCL 750.520d(1)(e)(i) is not foreclosed. Rather, if the actor’s occupation as a substitute teacher allowed the actor access to the student of the relevant age group in order to engage in sexual penetration, the Legislature intended to punish that conduct. [*Id.* at 347 (footnote omitted).]

Because MCL 750.520d(1)(e)(i) and MCL 750.520b(1)(b)(iv) clearly address the same subject or share a common purpose, they should be read together as a whole. *People v Harper*, 479 Mich 599, 621; 739 NW2d 523 (2007). Therefore, the *Lewis* court’s analysis is applicable to the language of the statute now at issue.

We conclude that the trial court was misled by the seemingly broad language used in *Lewis* without appropriately considering the context of that language. See *New Products Corp v Harbor Shores BHBT Land Devel LLC*, 331 Mich App 614, 632-633; 953 NW2d 476 (2019). In *Lewis*, the evidence was somewhat vague regarding the defendant’s employment status, but it was seemingly undisputed that the defendant continued to be a substitute teacher at the complainants’ school. *Lewis*, 302 Mich App at 344-345. The issue was specifically whether the elements of MCL 750.520d(1)(e)(i) could be satisfied if “the alleged acts occurred in the summer when defendant was not acting as the complainants’ substitute teacher or contractual service provider.” *Id.* at 345. Importantly, the *Lewis* Court clearly focused on the distinction between *being* a substitute teacher and *acting as* a substitute teacher. *Id.* at 345-346. The Court’s references to hypothetical acts occurring after school hours or over weekends renders that context unambiguous. See *id.* at 347.

We conclude that defendant's construction of *Lewis* was correct and the trial court's construction was wrong: *Lewis* holds that defendant must have held the status of being the complainant's substitute teacher at the time of the alleged acts, irrespective of whether defendant was actively performing that role at the time. The evidence indicates that defendant left her employment at the end of the 2002-2003 school year to attend a university, and she then took up substitute teaching at another school. The situation in *Lewis* therefore does not apply, because after the end of the 2002-2003 school year, defendant was no longer a substitute teacher at the complainant's school. Pursuant to *Lewis*, the touchstone is the defendant's status, and at the time of the alleged sexual penetration in "late 2003 – early 2004," defendant held the status of *former* substitute teacher. Because "is" in MCL 750.520b(1)(b)(iv) unambiguously connotes present tense, the trial court erred by denying defendant's motion to dismiss.

We reverse the circuit court's decision to deny defendant's motion to dismiss and remand for entry of an order dismissing the current charge against defendant, without prejudice to the possibility of refile of appropriate charges, should the prosecutor choose to do so. We do not retain jurisdiction.

/s/ Amy Ronayne Krause
/s/ Jane M. Beckering
/s/ Mark T. Boonstra