

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN PERRY KUOPUS,

Defendant-Appellant.

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UNPUBLISHED  
October 28, 1997

No. 201234  
Houghton Circuit Court  
LC No. 96-001437

Before: Murphy, P.J., and Hood and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of third-degree criminal sexual conduct (CSC III), MCL 750.520d(1)(a); MSA 28.788(4)(1)(a). He was sentenced to five to fifteen years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred in admitting testimony concerning statements made by the victim to an acquaintance about the sexual assault, maintaining that she had time to reflect on the event and fabricate, and therefore the excited utterance exception, MRE 803(2), did not apply. We disagree. We review a trial court's decision to admit evidence for an abuse of discretion. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995).

The acquaintance testified that the victim looked distraught after she left the trailer where the sexual assault occurred, and that she was crying during their two to three minute walk home, a distance of three hundred to five hundred feet. While walking home, the victim told the acquaintance that defendant forced her to engage in sexual intercourse, that her vagina hurt, that she was scared of being pregnant, and that she did not want her friends to tell anyone.

The "excited utterance" exception to the hearsay rule, MRE 803(2), encompasses any "statement relating to a startling event or condition made while the declarant was under the stress of excitement caused by the event or condition." MRE 803(2). In order for a statement to qualify as an

excited utterance, it must relate to a startling event or occurrence, must be made while the declarant is still under the stress caused by the startling event or occurrence, and must relate to the startling event or occurrence. *People v Straight*, 430 Mich 418, 424; 424 NW2d 257 (1988); *People v Jensen*, 222 Mich App 575, 581-582; 564 NW2d 192 (1997).

We find that the trial court did not abuse its discretion in admitting the victim's statements made to her acquaintance as an excited utterance. As the trial court noted, if a sexual assault did occur inside of the trailer, it would qualify as a startling event. See *People v Crump*, 216 Mich App 210, 213; 549 NW2d 36 (1996). Further, the record supports the trial court's findings that the victim's statements regarding the assault were made to her acquaintance within minutes of the event and that the victim was still under the stress of the event. Accordingly, the acquaintance's testimony regarding the victim's statements after the assault was properly admitted under the excited utterance exception.

Moreover, the challenged testimony was merely cumulative to the victim's testimony. The fifteen-year old victim testified that when she and defendant were alone, defendant pinned her on the bed, covered her mouth with his hand, and pulled her pants down around her knees, tearing them. Defendant then had forcible intercourse with her for approximately twenty minutes. The victim claimed that when she tried to scream and kick, defendant resisted and covered her mouth. Accordingly, even if erroneous, admission of the hearsay testimony was harmless because the facts in this case were shown by other competent testimony. *People v Kregger*, 335 Mich 457; 56 NW2d 349 (1953); *People v Hunt*, 170 Mich App 1, 13; 427 NW2d 907 (1988).

Defendant also argues that he is entitled to resentencing or remand because the trial court failed to articulate the reasons for the sentence imposed as mandated by *People v Triplett*, 432 Mich 568, 573; 442 NW2d 622 (1989). Again, we disagree. In *People v Lawson*, 195 Mich App 76, 78; 149 NW2d 147 (1992), this Court held that the articulation standard "may be satisfied where the articulation is provided by the context of the preceding remarks, e.g., where the remarks of both the prosecutor and defense counsel reflect an unambiguous understanding that the guidelines would be the basis of the sentence."

Here, the sentencing record reveals that the court immediately noted that it had received the Presentence Investigation Report (PSIR) and the Sentencing Information Report (SIR). The court then indicated that the sentencing guidelines recommendation was twenty-four to sixty months, and asked if either counsel had any "additions, deletions or corrections" to the PSIR or SIR. After some discussion, the prosecution requested in his final remarks that defendant be sentenced to *"the maximum under -- allowed by the guidelines of five to fifteen years."* Defense counsel likewise referred to the sentencing guidelines during his final remarks. Defense counsel indicated:

I would ask the Court to consider something *less than the maximum available under the guidelines*, and leave it at that, Your Honor.

The court then sentenced defendant to a term of five to fifteen years' imprisonment. Viewing the context of the remarks preceding the imposition of sentence, we are convinced that it is clear that the court sentenced defendant under the guidelines recommendation, and therefore the articulation requirement

was satisfied. We also note that, contrary to defendant's claim, the court was not

required to articulate why it sentenced defendant at the high-end versus the low-end of the sentencing guidelines recommendation. We find no abuse of discretion.

Affirmed.

/s/ William B. Murphy

/s/ Harold Hood

/s/ Richard A. Bandstra