STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SEAN KEITH TAYLOR,

Defendant-Appellant.

UNPUBLISHED
January 16, 1998

No. 198443
Recorder's Court
LC No. 94-013906

Before: Michael J. Kelly, P.J., and Cavanagh and N.J. Lambros*, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial convictions of two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(d); MSA 28.788(2)(1)(d). Defendant was sentenced to concurrent terms of seven to eleven years in prison for the two convictions. We affirm.

Defendant's first issue on appeal is that he was arrested without probable cause, therefore his statement was improperly admitted at trial. We disagree. Defendant made a motion to suppress the statement. A trial court's decision following a suppression hearing will not be reversed unless it is clearly erroneous. *People v Melotik*, 221 Mich App 190, 198; 561 NW2d 453 (1997).

A confession that results from an illegal arrest is inadmissible. *People v Richardson*, 204 Mich App 71, 78; 514 NW2d 503 (1994). "Pursuant to MCL 764.15(1)(c); MSA 28.874(1)(c), a peace officer may arrest a person without a warrant '[w]hen a felony in fact has been committed and the peace officer has reasonable cause to believe that the person has committed it.' 'Probable cause to arrest exists if the facts available to the officer at the moment of arrest would justify a fair-minded person of average intelligence to believe that the suspected person has committed a felony.'" *Richardson, supra*, 204 Mich App 78-79. In making his determination of probable cause, the arresting officer relied upon a reliable informant, corroboration of that informant's facts, a broken steering column on the car defendant was driving, license plates on the car defendant was driving that were not registered to that car, and the fact that the car was not registered in defendant's name. The facts available to the officer at the time of arrest would justify a fair-minded person of average intelligence in believing that the suspected person had committed a felony. "Once there is probable cause, any evidence seized as a

result of the arrest may be admissible evidence." *People v Heard*, 178 Mich App 692, 701; 444 NW2d 542 (1989). In the case at bar, since there was probable cause to arrest defendant, the trial court was not clearly erroneous in admitting defendant's statement.

Defendant's second issue on appeal is that there was insufficient evidence supporting his convictions of first-degree criminal sexual conduct. Specifically, defendant argues that the evidence presented at trial did not support the trial court's conclusion that defendant was aided and abetted in the use of force or coercion to accomplish the criminal sexual conduct. We disagree. Although defendant did not make a motion for directed verdict or a post-verdict motion, such a motion is not required to preserve a sufficiency of the evidence issue in a criminal matter. In a criminal case, the failure to make such a motion does not preclude appellate review of the question whether sufficient evidence was presented to support a conviction. *People v Wolfe*, 440 Mich 508, 516 n 6; 489 NW2d 748, modified 441 Mich 1201 (1992); *People v Patterson*, 428 Mich 502; 410 NW2d 733 (1987). In reviewing a claim of insufficiency of the evidence on appeal, the Court must view the evidence in a light most favorable to the prosecution to determine whether a rational factfinder could have found the essential elements of the crime proved beyond a reasonable doubt. *People v Jaffray*, 445 Mich 287, 296; 519 NW2d 108 (1994); *People v Reeves*, 222 Mich App 32, 34; 564 NW2d 476 (1997).

To establish aiding and abetting the crime of first-degree criminal sexual conduct, the prosecution must show that the underlying crime was committed by someone, and that the defendant either committed or aided and abetted the commission of that crime. *People v Wilson*, 196 Mich App 604, 614; 493 NW2d 471 (1992). The phrase "aiding and abetting" describes all forms of assistance rendered to the perpetrator of a crime. Taken in a light most favorable to the prosecution, we find that the prosecution presented sufficient evidence to establish aiding and abetting the crime of first-degree criminal sexual conduct. The complainant testified at trial that she did not wish to have oral sex with defendant and that she did not consent when defendant had anal sex with her. Furthermore, in his statement to the police, defendant said that he did not think that the complainant wanted to have sex with him. Viewing the evidence in a light most favorable to the prosecution, we find that the prosecution presented sufficient evidence to establish that defendant was aided and abetted in committing the crime of first-degree criminal sexual conduct.

Defendant's third issue on appeal is that defendant did not receive the appropriate credit for time served. In a motion for resentencing, the trial court corrected its error and gave defendant the appropriate credit for time served. Therefore, the issue is now moot.

Defendant's final issue on appeal is that the trial court erred in correcting a *Tanner* violation by increasing the maximum sentence. We disagree. Defendant asserts that his sentence was legally invalid. Defendant's argument presents a question of law which is reviewed de novo by this Court. *People v Gilmore*, 222 Mich App 442, 448; 564 NW2d 158 (1997).

Defendant argues that the trial court erred when it raised the maximum sentence from ten to eleven years. Defendant was initially sentenced to seven to ten years, but at the sentencing hearing, the prosecution immediately informed the trial court that this was an illegal sentence. The trial court then corrected the violation by sentencing defendant to seven to eleven years. The initial sentence given to

defendant was a clear violation of the rule set forth in *People v Tanner*, 387 Mich 683, 690; 199 NW2d 202 (1972). However, the trial court immediately corrected this error and raised the maximum sentence to eleven years. Therefore, the final sentence given to defendant did not violate *Tanner, supra*, 387 Mich 690.

In *People v Thomas*, 447 Mich 390, 392-394; 523 NW2d 215 (1994), the Michigan Supreme Court held that the trial court erred in increasing the maximum sentence as this was not a proper method in which to comply with the rule in *Tanner, supra*, 387 Mich 683. *Thomas, supra*, 447 Mich 392-394. The Court noted that in approximately sixty cases where the Court of Appeals corrected a *Tanner* error, it had never done so by increasing the maximum sentence. *Thomas, supra*, 447 Mich 392-393.

Defendant argues that when the trial court raised his maximum sentence from ten to eleven years, it violated the rule set forth in *Thomas, supra*, 447 Mich 390. This argument is not persuasive as the factual settings of *Thomas, supra*, 447 Mich 390, and the case at bar are vastly different. In *Thomas, supra*, 447 Mich 390, the sentence was entered, the proceedings ended, and then the mistake was corrected several months later. In the case at bar, the trial court noted its error and corrected it before the proceedings ended. Furthermore, it has long been held that a court speaks through written judgments and orders rather than oral statements or written opinions. *People v Carlos Jones*, 203 Mich App 74; 512 NW2d 26 (1993). Therefore, the trial court did not err in sentencing defendant to seven to eleven years.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark J. Cavanagh
/s/ Nicholas J. Lambros