

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LANDO LATHEL PALMER,

Defendant-Appellant.

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UNPUBLISHED

January 26, 1999

No. 204713

Recorder's Court

LC No. 96-005607

Before: Saad, P.J., and Kelly and Bandstra, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction of first-degree criminal sexual conduct, MCL 750.520b(1)(e); MSA 28.788(2)(1)(e). Defendant was sentenced to 36 to 120 months' imprisonment. We affirm.

Defendant's sole issue on appeal is that the prosecution failed to present sufficient evidence to support his conviction. We disagree.

The elements of first-degree criminal sexual conduct involving the use of a weapon are: (1) the actor engaged in sexual penetration with another person; and, (2) the actor used a weapon to accomplish sexual penetration. MCL 750.520b(1)(e); MSA 28.788(2)(1)(e); *People v Harris*, 133 Mich App 646; 350 NW2d 305 (1984), (citing *People v Anderson*, 11 Mich App 671; 314 NW2d 723 (1981)). The absence of consent is not an element to the crime of first-degree criminal sexual conduct. *People v Stull*, 127 Mich App 14, 20; 338 NW2d 403 (1983). The prosecution must prove lack of consent beyond a reasonable doubt only if it is raised as an affirmative defense. *People v Charles Thompson*, 117 Mich App 522, 528; 324 NW2d 22 (1982). Viewing the evidence in a light most favorable to the prosecution, we conclude that the prosecution presented sufficient evidence that complainant did not consent to sexual penetration by defendant and that defendant threatened complainant with a knife when he vaginally penetrated her.

Complainant was driven away in defendant's car and taken to defendant's home without her shoes, purse or identification; items she typically took with her when she went out. Furthermore, complainant testified that defendant threatened to cut her with a knife if she did not take off her clothes

and climb on top of him so he could vaginally penetrate her. Defendant penetrated complainant a total of three times without her consent. Defendant drove complainant home and complainant told her daughter she had been raped by defendant. A rational trier of fact could find beyond a reasonable doubt, based on these facts, that defendant committed first-degree criminal sexual conduct. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995)(citing *People v Petrella* , 424 Mich 221, 268-270; 380 NW2d 11 (1985)). We hold, therefore, that the prosecution presented sufficient evidence to support defendant's conviction.

Affirmed.

/s/ Henry William Saad

/s/ Michael J. Kelly

/s/ Richard A. Bandstra