

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAWRENCE MORRIS REYNOLDS,

Defendant-Appellant.

UNPUBLISHED

June 8, 1999

No. 205781

Macomb Circuit Court

LC No. 96-001370 FC

Before: Gage, P.J., and Smolenski and Zahra, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of one count of first-degree criminal sexual conduct, MCL 750.520b(1)(e); MSA 28.788(2)(1)(e), and sentenced to a term of twenty to forty years' imprisonment. He appeals as of right. We affirm.

Defendant first claims that the evidence was insufficient to show that he was armed with a weapon during the alleged sexual assault, and that the trial court therefore erred in denying his motion for a directed verdict. The victim testified that she felt what appeared to be a knife blade held next to her throat during the sexual assault. Viewed in a light most favorable to the prosecution, this evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant was "armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon." MCL 750.520b(1)(e); MSA 28.788(2)(1)(e); *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended on other grounds 441 Mich 1201 (1992); *People v Hurst*, 155 Mich App 573, 576; 400 NW2d 685 (1986). Thus, sufficient evidence existed to support defendant's conviction, and the trial court properly denied defendant's motion for a directed verdict.

Next, defendant argues that the trial court erred in failing to instruct the jury with respect to the limited admissibility of prior inconsistent statements by the victim. Because defendant failed to request such an instruction at trial, appellate review of this issue is precluded absent manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). Defendant has not demonstrated a likelihood of prejudice, and there was no suggestion by the prosecution or the trial court that the victim's prior statements should be used as substantive evidence. Accordingly, we conclude that manifest injustice has not been shown. *People v Hodges*, 179 Mich App 629, 632; 446 NW2d 325 (1989).

Moreover, because of the absence of prejudice to defendant, we likewise conclude that defendant has failed to show that defense counsel was ineffective for failing to request this instruction. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994).

Defendant also contends that the trial court erroneously admitted into evidence the knife found inside defendant's car shortly after his arrest because the knife was irrelevant and its admission greatly prejudiced him. The knife was relevant to establishing an element of the crime charged. MCL 750.520b(1)(e); MSA 28.788(2)(1)(e); MRE 401 and 402; *People v Crawford*, 458 Mich 376, 390; 582 NW2d 785 (1998). Furthermore, defendant has failed to establish that the high probative value of the evidence was substantially outweighed by the danger of unfair prejudice. MRE 403; *People v Vasher*, 449 Mich 494, 501; 537 NW2d 168 (1995). We therefore conclude that the trial court did not abuse its discretion in admitting the knife into evidence. *People v Howard*, 226 Mich App 528, 551; 575 NW2d 16 (1997).

Lastly, defendant argues that his sentence is disproportionate because the trial court erroneously scored offense variables (OV) one, two and twelve of the sentencing guidelines and his minimum sentence falls outside the guidelines' recommended minimum sentence range as correctly scored. Because defendant's challenge to the scoring of OV twelve is not directed at the accuracy of the factual basis for his sentence, defendant's argument fails to state a cognizable claim for relief. *People v Raby*, 456 Mich 487, 497; 572 NW2d 644 (1998); *People v Mitchell*, 454 Mich 145, 177-178; 560 NW2d 600 (1997). Regarding the scoring of OV one and OV two, we find sufficient factual support in the record for the trial court's scoring decisions. *People v Watkins*, 209 Mich App 1, 5; 530 NW2d 111 (1995) (Sentencing guidelines scoring decisions for which there is any supporting evidence will be upheld on appeal.). Defendant's sentence, being at the low end of the guidelines' recommendation, is presumptively proportionate, and defendant has failed to present any unusual circumstances that would overcome that presumption. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997). Accordingly, defendant is not entitled to resentencing. *Id.*

Affirmed.

/s/ Hilda R. Gage

/s/ Michael R. Smolenski

/s/ Brian K. Zahra