

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ORMOND FRANCIS FISH,

Defendant-Appellant.

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UNPUBLISHED

June 6, 2000

No. 217713

Houghton Circuit Court

LC No. 98-001614-FH

Before: Hood, P.J., and Saad and O’Connell, JJ.

O’CONNELL, J. (dissenting).

I dissent. The majority opinion reluctantly affirms defendant’s convictions and remands to the trial court for resentencing. I would affirm both defendant’s conviction and his sentence.

In the present case, during the night, defendant gained entrance to a home that was not his own. He pushed complainant, who was babysitting three children, against a wall and proceeded to hit and grope her. During the incident, defendant had his genitals exposed. Complainant screamed in an effort to attract the attention of neighbors, and awoke the children, who then came downstairs to witness defendant choking complainant as he held her in a headlock. The oldest child found a golf club and began striking defendant, eventually driving him out of the house.<sup>1</sup> Based on the foregoing evidence, I have no “questions regarding the wisdom of the jury verdict.”

At the sentencing hearing, the trial court noted that defendant’s potential for rehabilitation was minimal and that defendant apparently did not learn from his past transgressions, having continued the same drinking habits for over twenty-five years.<sup>2</sup> The court also recognized the severe emotional effects that the experience would likely have on complainant and the young children. After a thorough review of the record, I conclude that the sentence imposed was proportionate to the circumstances surrounding both the offense and offender. *People v Milbourn*, 435 Mich App 630, 636; 461 NW2d 1 (1990). I would affirm the sentence.

/s/ Peter D. O’Connell

<sup>1</sup> In my opinion, a jury could also reasonably conclude that the child's golf stroke saved complainant from further harm, including sexual misconduct.

<sup>2</sup> Defendant's long history of drinking, and drinking-related offenses, came to light during oral argument of this appeal.