

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOVAN CLAYBRON,

Defendant-Appellant.

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UNPUBLISHED

August 22, 2000

No. 212988

Oakland Circuit Court

LC No. 97-156799-FC

Before: Fitzgerald, P.J., and Holbrook, Jr. and McDonald, JJ.

PER CURIAM.

Defendant was convicted of first-degree criminal sexual conduct, MCL 750.520b(1)(e); MSA 28.788(2)(1)(e), second-degree criminal sexual conduct, MCL 750.520c(1)(e); MSA 28.788(3)(1)(e), first-degree home invasion, MCL 750.110(a)(2); MSA 28.305(a)(2), and two counts of armed robbery, MCL 750.529; MSA 28.797. He was sentenced as an habitual offender, second offense, MCL 769.10; MSA 28.1082, to concurrent prison terms of thirty to sixty years imprisonment for the first-degree CSC conviction, fifteen to 22½ years for the second-degree CSC conviction, fifteen to thirty years for the first-degree home invasion conviction, and twenty to sixty years for each armed robbery conviction.<sup>1</sup> Defendant appeals as of right. We affirm defendant's convictions and remand for amendment of the judgment of sentence.

Defendant first argues that the trial court erred by sentencing him on a dismissed count of armed robbery. Contrary to defendant's assertion, defendant was not sentenced on the dismissed armed robbery count. At the sentencing hearing, the trial court was advised that the presentence information report inaccurately stated that defendant was convicted of three counts of armed robbery, and the court sentenced defendant on only two counts. However, the judgment of sentence inaccurately states that defendant was convicted of three counts of armed robbery. Thus, on remand the judgment of sentence must be amended to reflect that defendant was convicted of two counts of armed robbery rather than three. *People v Spalla*, 147 Mich App 722, 726; 383 NW2d 105 (1985).

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<sup>1</sup> The sentences were ordered to be served consecutive to the sentence imposed for defendant's parole violation.

Defendant next argues that the trial court improperly imposed multiple punishments for his CSC convictions. We disagree. This Court has consistently held that the Legislature intended to impose a criminal sanction *for each separate act* of sexual penetration or sexual contact committed by a defendant. *People v Wilson*, 196 Mich App 604, 608; 493 NW2d 471 (1992); *People v Dowdy*, 148 Mich App 517, 521; 384 NW2d 820 (1986). Here, the victim testified that defendant held a knife to her cheek while he felt her breasts. He then rubbed baby oil over her body and penetrated her vagina with his fingers and attempted to insert his penis into her vagina three times. Defendant, therefore, engaged in at least one act of sexual contact and one act of sexual penetration. Because defendant engaged in both sexual contact and in sexual penetration, he was properly sentenced for the two separate offenses. *Wilson, supra* at 608; *Dowdy, supra* at 521.

Defendant next argues that his fifteen to twenty-year sentence for first-degree home invasion exceeds the two-thirds rule of *People v Tanner*, 387 Mich 683, 690; 199 NW2d 202 (1972). Defendant's argument is misplaced, as the judgment of sentence indicates that defendant was sentenced to a minimum term of fifteen years and a maximum term of thirty years for the first-degree home invasion conviction. This sentence does not violate *Tanner's* two-thirds rule.

Last, defendant argues that the prosecutor's failure to correct false testimony deprived him of a fair trial. Specifically, defendant contends that the prosecutor's dismissal of the armed robbery charge that pertained to victim Stacey Harris indicates that the prosecutor believed that Harris' version of events was untruthful. However, there is no indication in the record that the charge was dismissed because the prosecutor had knowledge that Harris' version of events was false. Although the prosecutor may have been skeptical as to Harris' credibility, mere skepticism does not give rise to a duty to correct a witness' testimony. Consequently, we are unable to conclude that the prosecutor had sufficient knowledge that Harris had lied so as to trigger the prosecutor's duty to correct the testimony. *People v Lester*, 232 Mich App 262, 278; 591 NW2d 267 (1998).

Affirmed and remanded for the limited purpose of amending the judgment of sentence consistent with this opinion. Jurisdiction is not retained.

/s/ E. Thomas Fitzgerald  
/s/ Donald E. Holbrook, Jr.  
/s/ Gary R. McDonald