

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANTHONY J. HANNON,

Defendant-Appellant.

---

UNPUBLISHED

March 12, 2002

No. 228235

Wayne Circuit Court

LC No. 99-011371

Before: Jansen, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of four counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(e), and was thereafter sentenced as a third-offense habitual offender, MCL 769.11, to four concurrent terms of twenty-five to fifty years' imprisonment. Defendant appeals as of right and we affirm.

Defendant first argues that the evidence was not sufficient to support his CSC I convictions. When determining whether sufficient evidence has been presented to sustain a conviction, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000), quoting *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

Defendant first contends that the victim's testimony was not plausible. However, the trier of fact is the judge of the facts and it is the function of the trier of fact to decide the weight and credibility of the witnesses. *Wolfe, supra*, pp 514-515, quoting *People v Palmer*, 392 Mich 370, 375-376; 220 NW2d 393 (1974). Here, the trial court, sitting as the trier of fact, specifically found the victim to be credible. We will not set aside this determination and note that credibility choices are to be made in support of the verdict. *Nowack, supra*, p 400.

Defendant also contends that the evidence was not sufficient to establish that he was armed during the entire assault (four separate penetrations). Under MCL 750.520b(1)(e), a person is guilty of CSC I if he engages in sexual penetration with another and the person is 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. Here, the victim testified that defendant threatened her with a large butcher knife during the assaults while confined in a van. Specifically, she testified that she saw the weapon at the beginning of the assault and at various times during the assaults.

Defendant's argument that the victim did not testify that she witnessed the perpetrator with the weapon during all four assaults is entirely unpersuasive. "It is enough that defendant began the assault with a knife," *People v Proveaux*, 157 Mich App 357, 362; 403 NW2d 135 (1987), and constructive possession is sufficient if the defendant has proximity to the weapon and an indicia of control, *People v Flanagan*, 129 Mich App 786, 797-798; 342 NW2d 609 (1983); *People v Brown*, 105 Mich App 58, 70-71; 306 NW2d 392 (1981); *People v Davis*, 101 Mich App 198, 300 NW2d 497 (1980). Therefore, we conclude that, viewing the evidence in a light most favorable to the prosecution, there was sufficient evidence that defendant was armed during all four penetrations and the essential elements of CSC I were proven beyond a reasonable doubt.

Defendant next argues that his sentence of twenty-five to fifty years was disproportionate.

Defendant's sentence was controlled by the legislative guidelines, MCL 769.31 *et seq.*, because the charged offenses occurred on October 21, 1999. The legislative sentencing guidelines, rather than the Supreme Court's sentencing guidelines, apply to offenses committed on or after January 1, 1999. MCL 769.34(1); *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000). Because defendant was a third habitual offender, the minimum recommended sentence pursuant to the legislative sentencing guidelines was 171 months to 427 months. The trial court sentenced defendant to a minimum term of twenty-five years, or 300 months, well within the recommended guidelines range. "If a minimum sentence is within the appropriate guidelines sentence range, the court of appeals shall affirm that sentence and shall not remand for resentencing absent an error in scoring the sentencing guidelines or inaccurate information relied upon in determining the defendant's sentence." MCL 769.34(10). Defendant's sentence is within the appropriate guidelines sentence range and defendant alleges no error in the scoring of the guidelines or inaccurate information used to determine his sentence. Consequently, we affirm the sentence. *People v Hegwood*, 465 Mich 432, 438-439; \_\_\_ NW2d \_\_\_ (2001); *People v Babcock*, 244 Mich App 64, 73; 624 NW2d 479 (2000).

Affirmed.

/s/ Kathleen Jansen  
/s/ Brian K. Zahra  
/s/ Patrick M. Meter