STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK DAVID BAILEY,

Defendant-Appellant.

UNPUBLISHED
June 6, 1997

No. 185618
Mecosta Circuit Court
LC No. 94-003483 FH

Before: Holbrook, Jr., P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of three counts of third-degree criminal sexual conduct, MCL 750.520d(1)(a); MSA 28.788(4)(1)(a), and habitual offender fourth offense, MCL 769.12; MSA 1084. Defendant's convictions on the underlying felony stem from three sexual encounters he had on April 18 and 19, 1994, with two fifteen-year-old girls. Defendant was sentenced to twenty to fifty years' imprisonment. Defendant appeals as of right, and we affirm.

Defendant first argues that the trial court erred when it denied his motion to quash the habitual offender information because it was not filed within the fourteen-day time period set forth in MCR 6.112(C). Defendant maintains that there were two separate informations filed on the underlying felony charges. He argues that because he was allowed to waive arraignment on the first information on November 10, 1994, it was de facto a valid information. We must decide if MCR 6.112(C)'s fourteen-day clock began to run with the filing of defendant's November 10, 1994, waiver of arraignment, or with the prosecution's filing of what defendant identifies as the second felony information on December 20, 1994.

The resolution of this issue rests on an interpretation of MCR 6.112(C). "Interpretation of a court rule is subject to the same statutory principles which govern statutory construction." *Michigan Basic Property Ins v Hackert Furniture*, 194 Mich App 230, 234; 486 NW2d 68 (1992). Accordingly, when interpreting a court rule, courts must give effect to the intent of the rule's authors. See *Michigan Employment Security Comm v Westphal*, 214 Mich App 261, 263; 542 NW2d 360 (1995). "If the language of the court rule is clear, this Court should apply it as written." *Bruwer v*

Oaks (On Remand), 218 Mich App 392, 397; 554 NW2d 345 (1996). Unless defined, "every word or phrase therein should be accorded its plain and ordinary meaning, taking into account the context in which the words are used." *People v Hack*, 219 Mich App 299, 305; 556 NW2d 187 (1996).

MCR 6.112(C) states:

> The prosecutor must file the information on or before the date set for the arraignment. A supplemental information charging the defendant with being an habitual offender may not be filed more than 14 days after the defendant is arraigned or has waived arraignment on the information charging the underlying felony, or after trial has begun if the defendant is tried within the 14-day period.

The first sentence of MCR 6.112(C) refers to the *filing* of the information with the court having jurisdiction over the matter. It does not refer to the filling out of the information form, or the presentment of the information to defense counsel. Further, this first sentence indicates that the filing of the information must be done on or before the arraignment date. The second sentence of MCR 6.112 (C) deals with the time period in which a supplemental habitual information must be filed. It is clear from the text and context of the rule that the felony information referenced in the second sentence is the filed information on the underlying felony referred to in the preceding sentence. MCR 6.112(C) indicates that a waiver on the information cannot be effective until that information is actually filed with the appropriate court. Applied to the facts of this case, MCR 6.112(C) indicates that the rule's fourteen-day clock began to run on December 20, 1994, the day that the prosecution filed the felony information with the court. Because the prosecution also filed the supplemental habitual offender information on December 20, 1994, the fourteen-day rule of MCR 6.112(C) was satisfied. We note that defendant was provided with a copy of the felony information form on October 17, 1994, because the complaint form was difficult to read. The record indicates that defense counsel was aware that she was being given this copy of the felony information as a courtesy. Therefore, the trial court correctly denied defendant's motion to quash the habitual offender information.

Defendant next argues that there was insufficient evidence presented at trial to convict him of three counts of CSC III. Defendant asserts that the prosecution's case rested primarily on the testimony of the two fifteen-year-old girls with whom defendant was found to have engaged in sexual intercourse. Defendant maintains that because both girls initially denied having engaged in sexual intercourse with him, their trial testimony to the contrary lacked credibility, and was accordingly insufficient evidence on which to convict. In order to convict defendant of CSC III, the prosecution had to prove that defendant's penis had penetrated the vaginas of both girls, and that the girls were fifteen years old at the time the acts occurred. CJI2d 20.12, 20.14. On appeal, defendant does not challenge the jury's finding that the girls were fifteen at the time; his appeal focuses solely on the element of penile-vaginal penetration.

Both girls testified that they had engaged in sexual intercourse with defendant, and that there had been penile-vaginal penetration during the acts. It is true that both girls initially denied to the police that they had engaged in sexual intercourse with defendant. The first girl testified that she had initially lied to the police because she was trying to protect defendant, with whom she believed she had fallen in love.

The second girl testified that she came from a religious upbringing, and that she had been home schooled by her parents until a few months before her sexual encounter with defendant. It is entirely reasonable for a jury to conclude that this second girl did not want her protective, religious parents to find out that she had engaged in sexual intercourse within months of having started to attend a public high school. As our Supreme Court has observed, "[j]uries, not appellate courts, see and hear witnesses and are in a much better position to decide the weight and the credibility to be given to their testimony." *Palmer v Palmer*, 392 Mich 370, 376; 220 NW2d 393 (1974). Looking at the girls' testimony in a light most favorable to the prosecution, we conclude that any rational juror could have concluded that the girls' trial testimony was credible, and that they had engaged in sexual intercourse with defendant.

Contrary to defendant's characterization of the prosecution's case-in-chief, we note that the girls' testimony was backed up by the testimony of others who had been present in defendant's home during the time of the sexual encounters, and by a number of letters written by defendant to the first girl. For example, on April 29, 1994, defendant wrote to the first girl, "If you are pregnant . . . I will provide for you and the baby regardless of where I am." On May 4, 1994, defendant wrote, "I knew I shouldn't have did [sic] it, but you made my body react and overcome my mind." In a letter dated May 14, 1994, defendant asks, "are you and [the second girl] still friends? You never talk about her and I wonder if you still resent her or me for our stupidity." Standing alone, defendant's own written words supply sufficient evidence to support defendant's conviction.

Affirmed.

/s/ Donald E. Holbrook, Jr.
/s/ Barbara B. MacKenzie
/s/ William B. Murphy