STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 14, 2003
v	No. 235560 Macomb Circuit Court
ERIC PAUL COCKREAM, Defendant-Appellant.	LC No. 00-003533-FC

Before: O'Connell, P.J., and Fitzgerald and Murray, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction of kidnapping, MCL 750.349, and the sentence of fifteen to fifty years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant first maintains that his kidnapping conviction must be reversed because the prosecution failed to present sufficient evidence of the element of asportation. Specifically, he claims that he was charged with the "forcible containment" form of kidnapping and that the asportation of the victim was incidental to the underlying crime of a simple assault only. Therefore, he asserts that the prosecution failed to present sufficient evidence of this element of the kidnapping offense. See *People v Wesley*, 421 Mich 375, 382-390; 365 NW2d 692 (1984). We disagree. The evidence, when viewed in the light most favorable to the prosecution, *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999), establishes that defendant placed his arm around the complainant's neck, nose and mouth and forcibly dragged her toward his running car for the apparent purpose of spiriting her away from the apartment complex. A finding that the asportation was for the purpose of kidnapping the complainant is further supported by her testimony that she believed defendant opened the door of his car in order to force her inside. Defendant is thus not entitled to relief. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).[1]

[1] We also note that, although defendant now objects to the instructions on asportation provided to the jury, defense counsel specifically agreed with the trial court's instructions as given. Any claim of error concerning the form of the instructions has thus been extinguished for appeal. *People v Carter*, 462 Mich 206, 214-215; 612 NW2d 144 (2000).

Defendant next argues that the trial court erred in refusing his request to instruct the jury on the cognate lesser offenses of assault and battery and aggravated assault. MCL 768.32 only permits instruction on necessarily lesser included offenses, not cognate lesser offenses. *People v Cornell*, 466 Mich 335, 354-355, 357; 646 NW2d 127 (2002). Therefore, even were we to credit defendant's assertion that these offenses are properly categorized as cognate lesser offenses, the trial court did not err in refusing to provide the requested instruction. *Cornell, supra*.

Defendant lastly argues that his sentence, which was within the legislative guidelines, violates the principle of proportionality. Because the trial court imposed a minimum sentence within the guidelines range, and defendant has not pointed to an error involving the scoring of the guidelines or the use of inaccurate information at sentencing, we affirm his sentence. MCL 769.34(10), *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000). Moreover, we find unpersuasive defendant's sole argument that this was a "very weak kidnapping offense."

Affirmed.

/s/ Peter D. O'Connell
/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray