

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GARY WAYNE WATSON,

Defendant-Appellant.

UNPUBLISHED

June 30, 2005

No. 252560

Washtenaw Circuit Court

LC No. 02-001640-FC

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a), and sentenced on both counts as a third habitual offender, MCL 769.11, to concurrent terms of twenty-five to forty-five years’ imprisonment. Defendant appeals from his sentence as of right. We affirm.

I. FACTS

Brandi Malone, aged ten, and her sister Nicki, aged eleven, were camping with defendant and his two friends. During the evening, defendant took the girls by boat across the Huron River to another campsite with only one tent. Brandi testified that sometime during the night or early morning defendant pulled her pants down, “licked” her “private part,” and “stuck something inside” her “private part.” Nicki testified that she awoke to Brandi calling her name, squeezing her hand, and crying while defendant had his hand over Brandi’s mouth and was on top of Brandi “touching” her “private spots.”

In the morning, defendant, Brandi and Nicki left the campsite by boat and then walked to the girls’ grandmother’s home. Ultimately, the girls’ father took them both to the hospital. Victoria Hamme, a pediatric emergency room nurse and certified sexual assault nurse examiner, conducted a “physical assessment” of Brandi’s body. The external exam revealed redness on the labia majora and labia minora, as well as a cut to the posterior fourchette. Hamme testified that “her physical findings were consistent with the statements that she took” from Brandi.

At sentencing, defendant objected to various statements contained in the presentence investigation report, and the scoring of offense variables 8 (victim asportation), 10 (exploitation of vulnerable victim), 11 (multiple penetrations), 13 (pattern of felonious criminal activity) and the prosecution’s request to score ten rather than five points under offense variable 3 (bodily

injury). The court agreed with defendant's scoring objections with regard to offense variables 10 and 13 and a lower guidelines range was computed.

II. STANDARD OF REVIEW

A trial court has discretion in scoring the sentencing guidelines. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). This Court will uphold the trial court's guidelines scoring if there is any evidence in the record to support it. *People v Spanke*, 254 Mich App 642, 647; 658 NW2d 504 (2003).

III. ANALYSIS

A. OFFENSE VARIABLE 3

MCL 777.33 provides in pertinent part:

(1) Offense variable 3 is physical injury to a victim. Score offense variable 3 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(d) bodily injury requiring medical treatment occurred to a victim.....10 points

(e) bodily injury not requiring medical treatment occurred to a victim
..... 5 points

(3) As used in this section, 'requiring medical treatment' refers to the necessity for treatment and not the victim's success in obtaining treatment.

Here, the record revealed the existence of bodily injury necessitating medical treatment where the ten-year-old victim's vaginal area was swollen and red and her vaginal canal was torn. Defendant's argument that the injuries were minor and did not necessitate medical treatment is disingenuous in an age where sexual contact can lead to life-threatening sexually transmitted disease. Thus, the trial court did not err in assessing ten points for OV 3.

B. OFFENSE VARIABLE 8

MCL 777.38 provides in pertinent part:

(1) Offense variable 8 is victim asportation or captivity. Score offense variable 8 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

(a) A victim was asported to another place of greater danger or to a situation of greater danger or was held captive beyond the time necessary to commit the offense.....15 points

(b) No victim was asported or held captive0 points

Additionally, evidence that defendant's removal of the victim from a campsite shared by others to a secluded campsite located on an island reached only by boat, supported the assessment under OV 8 of fifteen points for the asportation of a victim to a more dangerous location.

Affirmed.

/s/ Peter D. O'Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello