

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALLEN LEROY GRAY,

Defendant-Appellant.

UNPUBLISHED

May 14, 1996

No. 171212

LC No. 93-001609-FC

Before: Kavanagh, T.G.,* P.J., and R.B. Burns** and G.S. Allen,** JJ.

MEMORANDUM.

Defendant tendered a conditional plea of nolo contendere to two counts of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b), and one count of kidnapping, MCL 750.349; MSA 28.581. He was sentenced to ten to fifteen years' imprisonment for each CSC conviction and to life imprisonment for the kidnapping conviction. He now appeals of right. We affirm. This case has been decided without oral argument pursuant to MCR 7.214(A).

Defendant first contends that the victim's identification of him was tainted when the police showed her his photograph after his arrest and in the absence of counsel. *People v Anderson*, 389 Mich 155, 168; 205 NW2d 461 (1973). The trial court held a hearing and concluded that the victim's subsequent identification of defendant had an independent basis sufficient to purge any taint resulting from the impermissibly suggestive showup. The court's decision is not clearly erroneous, and we decline to disturb it. *People v Burrell*, 417 Mich 439, 448; 339 NW2d 403 (1983).

*Former Supreme Court Justice, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

**Former Court of Appeals Judges, sitting on the Court of Appeals by assignment pursuant to Administrative Order 1995-1.

Defendant next maintains that the trial court erred by denying his motion to suppress evidence seized following his arrest for an unrelated crime he was allegedly entrapped into committing. Following an evidentiary hearing, the court determined that no entrapment had occurred. Having reviewed the record, we hold that the court's findings are not clearly erroneous. *People v Juillet*, 439 Mich 34; 475 NW2d 786 (1991); *People v D'Angelo*, 401 Mich 167, 183; 257 NW2d 655 (1977).

Defendant further argues that two search warrants were issued without probable cause because the affidavits upon which they were based were factually defective. After a hearing, the trial court concluded otherwise, and its ruling is not clearly erroneous. *Burrell, supra*.

We find no merit to defendant's final contention that the trial court erred in scoring two offense variables relative to the kidnapping conviction.

Affirmed.

/s/ Thomas G. Kavanagh

/s/ Robert B. Burns

/s/ Glenn S. Allen, Jr.