

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 173465

LC No. 93-123382-FC

GERALD J. BAUER, JR.,

Defendant-Appellant.

Before: Michael J. Kelly, P.J., and Bandstra and S.B. Miller,* JJ.

BANDSTRA, J. (concurring in part and dissenting in part).

I dissent from the portion of the majority opinion that remands for resentencing because of defendant's argument regarding Offense Variable 2. I conclude that, based on the Presentence Investigation Report's statement that a medical examination verified physical injury to the victim's anal region, testimony from the victim's mother that the victim was suffering with a lack of bowel control, and the Presentence Investigation Report's statement attributable to a pediatrician that this kind of problem "is not uncommon with an anal penetration," there was sufficient evidence to support the scoring of OV 2. *People v Green*, 152 Mich App 16, 18; 391 NW2d 507 (1986). Accordingly, I would affirm.

/s/ Richard A. Bandstra

* Circuit judge, sitting on the Court of Appeals by assignment.