

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LLOYD SAMUEL REEVES,

Defendant-Appellant.

UNPUBLISHED

March 14, 1997

No. 173086

Macomb Circuit Court

LC No. 92002487 FC

Before: Hoekstra, P.J., and Marilyn Kelly and J.B. Sullivan,* JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for first-degree criminal sexual conduct. MCL 750.520b(1)(e); MSA 28.788(2)(1)(e). The trial court sentenced him to twenty-five to forty years' imprisonment. We affirm.

Defendant first argues that there was insufficient evidence to support his conviction. This Court reviews claims of insufficient evidence by viewing the evidence in the light most favorable to the prosecution. We determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), modified 441 Mich 1201 (1992).

MCL 750.520b; MSA 2.788(2) states in pertinent part:

(1) A person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person and if any of the following circumstances exist:

(e) The actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon.

Defendant conceded that he engaged in sexual intercourse with complainant, his ex-wife, but maintained that it was consensual. He further conceded that he had a knife and that he had placed it

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

under complainant's car seat. Complainant, in contrast, testified that she feared defendant and that she did not consent to having sex with him. She stated that defendant pulled her into his car and pulled out a ginsu knife. She explained that she feared defendant because of his past behavior with knives.

The question of consent was one of credibility. The court, sitting as the trier of fact, resolved the matter in favor of complainant. We will not disturb the decision on appeal. See *People v Daniels*, 172 Mich App 374, 378; 431 NW2d 846 (1988). Viewing the evidence in the light most favorable to the prosecution, sufficient evidence was introduced to justify the trial court's conclusion that defendant was guilty of first-degree criminal sexual conduct beyond a reasonable doubt. *People v Fisher*, 193 Mich App 284, 287; 483 NW2d 452 (1992).

Defendant's argument that the trial court erroneously based his conviction on the wrong section of the criminal sexual conduct statute is without merit. It is true that the court discussed the element of force and coercion which is contained in subsection (f) not (e). However, the court's opinion clearly establishes that the prosecutor proved his case under subsection (e) beyond a reasonable doubt. We find that the trial court was aware of the issues in this case and correctly applied the law. See *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995).

Next, defendant asserts that the trial court abused its discretion by denying his motion that complainant submit to a psychiatric examination. This Court reviews a trial court's decision to deny a party's motion for an abuse of discretion. *People v Graham*, 173 Mich App 473, 477; 434 NW2d 165 (1988).

A psychiatric evaluation of a complaining witness is permitted under Michigan law, but a defendant must demonstrate a "compelling" reason for it. *People v Payne*, 90 Mich App 713, 723; 282 NW2d 456 (1979). This Court has cautioned against sanctioning "fishing expeditions." *Graham, supra*. The *Graham* decision instructs that "the trial court should consider whether the defendant's rights can be fully protected by cross-examination." *Id.*

In this case, defendant was able to cross-examine the complainant on all aspects of her relationship with him and was permitted to explore issues of her credibility. Defendant failed to present a "compelling" reason to mandate a psychiatric evaluation. The trial court did not abuse its discretion in its decision. *Id.* at 477-478.

Defendant's final argument is that the sentence imposed by the trial judge was not proportionate. See *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). We disagree.

Defendant's sentence is within the sentencing guidelines' recommended range of ten to twenty-five years. Therefore it is presumptively proportionate. *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994). Defendant cites no unusual circumstances that would render imposition of the sentence an abuse of discretion. See *People v Dukes*, 189 Mich App 262, 266; 471 NW2d 651 (1991). We therefore conclude that the sentence was proportionate to the offense for which he was charged.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Marilyn Kelly
/s/ Joseph B. Sullivan