

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TYRONE D. LEE,

Defendant-Appellant.

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UNPUBLISHED  
February 21, 2003

No. 233313  
Wayne Circuit Court  
LC No. 00-006993

Before: Markey, P.J., and Smolenski and Meter, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of two counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(f), and aggravated assault, MCL 750.81. He was sentenced to concurrent terms of fifteen to thirty years' imprisonment for the CSC I convictions and one year for the aggravated assault conviction. Defendant now appeals by right. We affirm.

Defendant first argues that insufficient evidence existed to convict him of CSC I because the evidence failed to show that defendant caused personal injury to the victim pursuant to MCL 750.520b(1)(f). We disagree. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor and 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 478, amended 441 Mich 1201 (1992). "Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime." *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

MCL 750.520b(1)(f) provides, 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 exists:

\* \* \*

(f) The actor causes personal injury to the victim and force or coercion is used to accomplish sexual penetration.

Further, MCL 750.520a(j)<sup>1</sup> defines personal injury as “bodily injury, disfigurement, mental anguish, chronic pain, pregnancy, disease, or loss or impairment of a sexual or reproductive organ.” *People v Brown*, 197 Mich App 448, 451; 495 NW2d 812 (1992).

Although defendant asserts that he did not cause any of plaintiff’s injuries but rather that Donald Oliver caused the injuries, the evidence establishes otherwise. The victim specifically testified that while forcing sexual penetration upon the victim, defendant told the victim to open her mouth and then hit her in the face with his fist causing redness and burning. Minor scratches, bruises, and tenderness as a result of force used by a defendant to accomplish sexual penetration is sufficient to sustain a CSC I conviction under MCL 750.520b(1)(f). *People v Gwinn*, 111 Mich App 223, 239; 314 NW2d 562 (1981); see, also, *People v Jenkins*, 121 Mich App 195, 198; 328 NW2d 403 (1982) (pain, difficulty in breathing, scratches, and a small bruise were sufficient to constitute bodily injury component of personal injury); *People v Hollis*, 96 Mich App 333, 337; 292 NW2d 538 (1980) (bruises and scratches were sufficient to constitute personal injury under CSC I statute). Further, to satisfy the personal injury component of MCL 750.520b(1)(f), the bodily injury “need not be permanent or substantial.” *Jenkins, supra*. Defendant’s assault on the victim with his fist was sufficient to constitute personal injury. Moreover, we agree with the trial court that defendant’s hitting of the victim in her face worsened the injuries to the victim’s head that were previously inflicted by Donald Oliver. MCL 750.520b(1)(f) does not require that a defendant be the sole cause of the victim’s injury. *Brown, supra* at 452. It is sufficient that the defendant “was the cause of some part of the victim’s total injury.” *Id*. Viewing the evidence in a light most favorable to the prosecutor, sufficient evidence existed to convict defendant of CSC I pursuant to MCL 750.520b(1)(f).

Next, defendant argues that the trial court erred in rendering inconsistent verdicts after accepting as true part of the victim’s testimony regarding two of the four assaults and then not accepting the victim’s testimony that two other assaults occurred. We disagree.

Relying upon *People v Burgess*, 419 Mich 305, 310-311; 353 NW2d 444 (1984), and *People v Vaughn*, 409 Mich 463, 466; 295 NW2d 354 (1980), defendant claims that a trial judge sitting without a jury does not normally enjoy the freedom to render inconsistent verdicts because of a desire to compromise or to be lenient. However, contrary to defendant’s assertion, we conclude that the trial court did not render inconsistent verdicts. Defendant was originally charged with four counts of CSC I. Following a bench trial, defendant was convicted of only two counts of CSC I. In its bench opinion, the trial court did not accept as true some parts of the victim’s testimony and reject other parts. The trial court found defendant guilty of two counts of CSC I on the basis of the victim’s testimony that defendant had sexually penetrated her with his penis in the victim’s mouth and vagina. It is apparent from the trial court’s opinion that it believed that the other two counts of CSC I with which defendant was charged were brought pursuant to an aiding and abetting theory. The court did not believe that the victim’s testimony proved that defendant aided and abetted Donald Oliver in the matter; thus, the trial court acquitted defendant of the other two counts. The court did not find that the victim’s testimony was incredible as it related to the assaults, but rather that only two of the direct assaults

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<sup>1</sup> MCL 750.520a(j) was renumbered as MCL 750.520a(k) effective March 28, 2001. 2000 PA 505.

perpetrated by the defendant were charged and proven. Defendant has misconstrued the trial court's ruling. The trial court did not render inconsistent verdicts.

Defendant further argues that the trial court incorrectly scored offense variables (OV) 7 and 8 in sentencing defendant. On appeal, a party may not challenge the scoring of the sentencing guidelines or the accuracy of the presentence report unless he raised the issue at or before sentencing or demonstrates that the challenge was brought as soon as the inaccuracy could reasonably have been discovered. MCR 6.429(C); *People v McGuffey*, 251 Mich App 155, 165; 649 NW2d 801 (2002).<sup>2</sup> Defendant concedes that he failed to object to the scoring of OV 7 and 8 at or before sentencing was imposed, and there is no indication that the inaccuracy could not have been discovered before that time. Accordingly, this issue is not preserved. *Id.* However, even if forfeited, a sentencing guidelines error is subject to reversal if it constituted a plain error that affected substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *People v Kimble*, 252 Mich App 269, 275-276; 651 NW2d 798 (2002). We conclude that defendant has failed to establish plain error that affected his substantial rights.

Defendant contends that the trial court misscored OV 7, which provides for a score of fifty points where “[a] victim was treated with terrorism, sadism, torture, or excessive brutality.” MCL 777.37(1)(a). Defendant also argues that the trial court misscored OV 8, which provides for a score of fifteen points where “[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.” MCL 777.38(1)(a). If there is any evidence to support the trial court's scoring of sentencing guidelines, this Court will uphold the trial court's scoring. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). After reviewing the record, we conclude that evidence existed to support the trial court's scoring of both variables. The trial court properly interpreted the language contained in the offense variables at issue in relation to the facts of the case, which included the victim being hit, being afraid, receiving severe injuries, and being held for hours while being totally nude and sexually assaulted. Because defendant was sentenced within the recommended range of the sentencing guidelines, and he has not established a scoring error or shown that this sentence was based on inaccurate information, the sentence must be upheld. *People v Leversee*, 243 Mich App 337, 348; 622 NW2d 325 (2000).

We affirm.

/s/ Jane E. Markey  
/s/ Michael R. Smolenski  
/s/ Patrick M. Meter

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<sup>2</sup> The statutory preservation provision, which specifies that a party may not challenge the scoring of the guidelines or the accuracy of the information used in imposing a sentence within the guidelines range unless he raised the issue at sentencing, in a proper motion for resentencing, or in a proper motion to remand filed with this Court, MCL 769.34(10), *People v Harmon*, 248 Mich App 522, 530; 640 NW2d 314 (2001), conflicts with and is superseded by the court rule, *McGuffey*, *supra* at 165-166. But see *People v Wilson*, 252 Mich App 390, 399; 652 NW2d 488 (2002), where two of the three appellate judges in concurring opinions stated that *McGuffey* was wrongly decided because the statute should prevail over the court rule.