

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOY LEE JOHNSON,

Defendant-Appellant.

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UNPUBLISHED

June 30, 2005

No. 252721

Calhoun Circuit Court

LC No. 2003-001794-FC

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

PER CURIAM.

Defendant was convicted, following a jury trial, of two counts of first-degree criminal sexual conduct (CSC), in violation of MCL 750.520b. He was sentenced as a second habitual offender, MCL 769.10, to 23 to 45 years' imprisonment. Defendant appeals as of right. We affirm.

**I. FACTS**

Kristi Uhley, aged 20, had agreed to accompany defendant<sup>1</sup>, her grandfather, for a few weeks in his truck. When defendant pulled over the first night, October 13, 2002, he explained to Uhley that they would both sleep on the bottom bunk in the back of the cab because the second bed was covered with bags and clothes. Sometime during the night, defendant put his arm around Uhley, rubbed her leg with his hand and then her genital area over her pajamas. Uhley told defendant to stop and attempted to roll off of the bed, but defendant kept his arm around her and then removed her pajama bottoms and underwear. Defendant digitally penetrated Uhley while he had both legs wrapped around her so that she could not move her legs.

Uhley testified that defendant repeated this sexual behavior each time he stopped at a truck stop. Defendant also forcibly performed oral sex on Uhley while she again told him to stop. Uhley further testified that she remained in the back of the cab naked from the waist down because defendant had taken her underwear and told her not to put her pajama bottoms back on.

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<sup>1</sup> Defendant was a truck driver.

During this time, Uhley did not eat or drink and she did not take her medication because all were in the front part of the cab, closer to defendant. Uhley has a heart condition and if left untreated, her heart temporarily stops and starts, usually after she has passed out. When defendant would leave the truck, he left the key in the lock hole so Uhley could not pull the lock up to unlock the door. Uhley believed that she was locked inside the truck.

On October 15, 2002, while defendant was out of the truck, Uhley called 911 for assistance. Officer John Carroll testified he was first to respond to the scene and found Uhley in the sleeper part of the cab, physically shaking, and she appeared to have been crying. Police subsequently transported defendant to the sheriff's department and Uhley to the hospital.

## II. STANDARD OF REVIEW

The interpretations of statutory sentencing guidelines are subject to de novo review. *People v Babcock*, 469 Mich 247, 253; 666 NW2d 231 (2003). The sentencing court has discretion in determining the number of points to be scored provided that there is evidence on the record which adequately supports a particular score, *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). ““Scoring decisions for which there is any evidence in support will be upheld.”” *Id.*, quoting *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996). This Court reviews the scoring to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

## III. ANALYSIS

### A. OFFENSE VARIABLE 7

Defendant first asserts that the trial court erred in scoring offense variable 7 and his sentence is a departure from the correct sentencing guidelines range. We disagree.

MCL 777.37 – Aggravated physical abuse – provides:

(1) Offense variable 7 is aggravated physical abuse. Score offense variable 7 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 treated with sadism, torture, or excessive brutality or *conduct designed to substantially increase the fear and anxiety a victim* suffered during the offense ..... 50 points

(b) No victim was treated with sadism, torture, or excessive brutality or *conduct designed to substantially increase the fear and anxiety a victim* suffered during the offense ..... 0 points

(2) Count each person who was placed in danger of injury or loss of life as a victim.

(3) As used in this section, “sadism” means *conduct that subjects a victim to extreme or prolonged pain or humiliation and is inflicted to produce suffering or for the offender’s gratification.* [Emphasis added.]

The evidence admitted at trial supports the finding that defendant, within hours of persuading his 20-year-old granddaughter to accompany him in his semi-tractor for an extended period of time, proceeded to forcibly remove her underwear and pajama bottoms and sexually assault her. Defendant left the victim in this state, naked from the waist down with the exception of her blanket, for two days having told her not to put her pajama bottoms back on. Furthermore, the available food and water as well as the victim’s heart medication were in the front of the cab. Defendant told her that she could come up and get it if she wanted it; however, this would mean entering that part of the truck closest to defendant while still naked from the waist down. Based on this evidence, defendant’s actions were designed to increase his victim’s anxiety and subjected her to prolonged humiliation; therefore, the trial court did not abuse its discretion in scoring OV 7 at 50 points.

#### B. Offense Variable 8

Next, defendant asserts that the trial court erred in scoring offense variable 8 and his sentence is a departure from the correct sentencing guidelines range. We disagree.

MCL 777.38 – victim asportation or captivity – in relevant part provides:

(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 captive ..... 0 points

The evidence shows that defendant’s victim remained in the back part of defendant’s truck cab because he would not allow her to put her pants back on, that she believed that defendant locked her inside the truck whenever he went outside, and that the sexual assaults occurred over the course of two days while defendant transported the victim farther and farther away from home. Furthermore, the victim testified that she had attempted to get out of the driver’s side door at one point but it was locked and she could not get out. While defendant periodically stopped at various truck stops, where the assaults occurred, such places were unfamiliar to the victim, and she testified that she was afraid of people at truck stops but was also afraid of what defendant might do if he caught her trying to leave the truck, especially since he had noted to her that only her sister knew where she was and that her sister was not expecting the victim to return for a couple of weeks. By asporting the victim farther and farther away from home and to unfamiliar locations, defendant asported her to places of greater danger where he then held the victim captive by telling her to remain partially naked and by, at least on one occasion, locking her inside the truck cab. Therefore, adequate evidence was presented at trial to

support the scoring of OV 8 at 15 points and the trial court did not abuse its discretion in scoring the offense variable accordingly.

The trial court scored defendant's offense variable correctly and defendant's sentence was within the resulting guidelines range; thus, defendant is not entitled to resentencing and we must affirm. MCL 769.34(10).

Affirmed.

/s/ Peter D. O'Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello