

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID MICHAEL BICKHAM,

Defendant-Appellant.

UNPUBLISHED

February 9, 2010

No. 291802

Arenac Circuit Court

LC No. 08-003352-FC

Before: K. F. Kelly, P.J., and Hoekstra and Whitbeck, JJ.

HOEKSTRA, J., (*concurring in part and dissenting in part*).

I respectfully dissent from the majority's holding that offense variable 8, MCL 777.38, was properly scored at 15 points. Fifteen points may be scored for OV 8 if "a victim was asported to another place of greater danger." MCL 777.38(1)(a). There must be some movement of the victim to a place of greater danger. *People v Spanke*, 254 Mich App 642, 647; 658 NW2d 504 (2003). The use of force, however, is not required. *Id.*

The majority, noting that OV 8 does not require the victim to be moved any great distance, affirms the scoring of OV 8 at 15 points because the sexual activity between defendant and the victim took place in the victim's bedroom. From this fact, the majority infers that the victim was in greater danger because her bedroom was a place where it was less likely that others would discover the sexual activity. In addition, the majority assumes that defendant, before engaging in sexual activity with the victim, moved the victim to her bedroom from another room in the house. Without further facts, these conclusions might well be a sufficient basis to score 15 points for OV 8. However, undisputed facts reveal additional circumstances that, in my opinion, preclude the scoring of OV 8 in the present case.

The victim, who was 13 years old, and defendant, the victim's stepfather, resided in the same house. On an almost daily basis for a period of seven months the two engaged in sexual activity. Although the sexual activity was unquestionably wrong, the victim was a willing participant. In my opinion, these circumstances eviscerate any reasonable inference that, because the victim's bedroom was the place where sexual activity occurred, there was some movement of the victim to a place of greater danger. Indeed, under the circumstances, inferring anything based on which room in the house the sexual activity occurred is speculation, as is assuming any movement of the victim.

In all other respects, I concur and join with the majority.

/s/ Joel P. Hoekstra