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Court of Appeals of Minnesota.

STATE of Minnesota, Respondent,

v.

Aldridge TAYLOR, Jr., Appellant.

No. C1-89-164.

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Nov. 7, 1989.

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Review Denied Dec. 15, 1989.

Appeal from District Court, Hennepin County; Hon. Robert Lynn, Judge.

Attorneys and Law Firms

Hubert H. Humphrey, III, Attorney General, St. Paul, Thomas L. Johnson, Hennepin County Attorney, Michael Richardson, Assistant County Attorney, Minneapolis, for respondent.

C. Paul Jones, State Public Defender, Michael F. Cromett, Assistant State Public Defender, St. Paul, for appellant.

Considered and decided by WOZNIAK, C.J., and SCHUMACHER and GARDEBRING, JJ.

UNPUBLISHED OPINION

SCHUMACHER, Judge.

FACTS

*1 Appellant was convicted by jury of two counts of criminal sexual conduct in the first degree in violation of Minn.Stat. §§ 609.342 1(d)(e) (1988). The trial court sentenced appellant to the statutory maximum sentence of 240 months, two and one-half times the presumptive sentence.

DECISION

I.

Appellant contends there was insufficient evidence to convict him. In reviewing appellant's claim of insufficient evidence this court limits its inquiry to whether the fact finder could have reasonably found the appellant guilty on the evidence adduced at trial. *State v. Merrill*, 274 N.W.2d 99, 111 (Minn.1978). This court must review the evidence in the light most favorable to the state. *Id.* A review of the facts clearly indicate that there was sufficient evidence to convict defendant of both counts.

II.

Appellant contends that the facts do not justify the upper durational departure. Generally, when aggravating circumstances are present, the upper limit on a durational departure is double the Sentencing Guidelines maximum presumptive sentence. *State v. Glaraton*, 425 N.W.2d 831, 834 (Minn.1988); *State v. Evans*, 311 N.W.2d 481, 483 (Minn.1981). But when the aggravating circumstances are severe, the doubling limit does not apply. *State v. Glaraton*, 425 N.W.2d at 834; *State v. Stumm*, 312 N.W.2d 248, 249 (Minn.1981).

The trial court by written findings concluded that the victim was particularly vulnerable, that the crime was committed with particular cruelty, and that the conviction was for an offense where the victim was injured and concluded that these facts justified the upward departure. We agree.

The victim was 17 years of age at the time and living alone in an apartment with her 15-month-old son. The trial court found that her zone of privacy was invaded when she was handcuffed and raped at knife point in her apartment in the presence of her son. *See State v. Winchell*, 363 N.W.2d 747, 751 (Minn.1985). Appellant handcuffed the victim from behind to render her helpless. *See State v. Winchell*, 363 N.W.2d at 751 (binding victim may be considered in determining whether offense committed in particularly serious way). Appellant committed multiple acts of penetration on the victim both vaginally, and orally, ejaculating in the victim's mouth. *See State v. Glaraton*, 425 N.W.2d at 834 (multiple acts of penetration constitute

State v. Taylor, Not Reported in N.W.2d (1989)

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aggravating factor for more than double departure). Appellant committed the rape in the presence of the victim's 15-month-old son. *See State v. Gaines*, 408 N.W.2d 914, 918 (Minn.Ct.App.1987), *pet. for rev. denied* (Minn. Sept. 18, 1987) (commission of sexual assault in presence of child aggravating factor justified two and one-half times presumptive sentence. Furthermore, the victim suffered injury to her wrists from the handcuffs.

We conclude the trial court was justified in departing more than double the presumptive sentence.

Appellant further contends that the trial court's departure was in part a punitive measure for his electing to go to trial. We

find no merit in this claim. *See State v. Mollberg*, 310 Minn. 376, 246 N.W.2d 463, 471 (1976). The trial court clearly and thoroughly stated on the record the evidence justifying an upward departure. Moreover, the court clearly considered the presentence investigation report and the prosecutor's request in determining whether to depart from the guidelines.

*2 Affirmed.

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