

## COA Opinion: Court of Appeals affirms conviction and sentences on counts of kidnapping, armed robbery, and first degree criminal sexual conduct.

13. July 2011 By Kristina Araya

In *People v McDonald*, No 297889, the court affirmed the defendant's convictions of kidnapping, armed robbery, and first degree criminal sexual conduct (CSC), which were based largely on DNA evidence obtained at a hospital. The court also affirmed the defendant's sentences of imprisonment for 225 months to 60 years for each of his three convictions.

The court rejected defendant's argument that the rape kit used at the hospital was contaminated thus undermining its reliability. The defendant claimed that the doctor did not follow protocol with the kit, and implied that the mishandling of the kit resulted in his sperm gotten into the kit. The court found this argument "patently ridiculous." Two different scientists from two different laboratories analyzed DNA from actual sperm cells in samples taken from the kit. DNA from the victim was also found in the same kit, so the kit must necessarily be the correct one. The DNA from the sperm cells was compared to a sample of DNA taken from the defendant's mouth, and found to be a match. The court noted that the only way the rape kit could have been contaminated as defendant implied was if the doctors obtained a sperm sample from the defendant, which they did not do.

The court also rejected the defendant's claim that the trial court mis-scored his offense variables when calculating his sentencing guidelines range. First, the court affirmed a score of 10 points on OV-3, which is necessary if the victim suffered bodily injury requiring medical treatment. The victim suffered an infection as a consequence of the rape which constitutes "bodily injury requiring medical treatment" for the purpose of OV-3.

Second, the court affirmed a score of 50 points on OV-7, which is necessary when the "conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." Here, the defendant threatened the victim by telling her that he knew and had been watching her, and would find her in the future. The court concluded this threat was sufficient evidence to show that defendant's conduct was designed to substantially increase the victim's fear.

Third the court affirmed a score of 15-points on OV-19, which is appropriate where the defendant used force to interfere with the administration of justice. The defendant made the victim promise not to tell the police about the rape as a precondition to letting her go, and threatened the victim that he would find her in the future. The court concluded that a threat to kill a victim in order to prevent the reporting of the crime justifies a score of 15, and if there was any error it was that the guidelines were scored lower than they should have been.