

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LASAN CHARLES BELLAMY a/k/a CHARLES
LASAN BELLAMY,

Defendant-Appellant.

UNPUBLISHED

January 29, 1999

No. 196157

Macomb Circuit Court

LC No. 95-000853 FC

Before: Sawyer, P.J., and Bandstra and R. B. Burns*, JJ.

PER CURIAM.

Defendant was charged with one count of first-degree criminal sexual conduct involving the use of a weapon, MCL 750.520b(1)(e); MSA 28.788(2)(1)(e), and three counts of first-degree criminal sexual conduct involving accomplices, MCL 750.520b(1)(d); MSA 28.788(2)(1)(d). Following a jury trial, defendant was convicted of one count of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b) (force or coercion). Defendant was sentenced to ten to fifteen years' imprisonment, and ordered to serve his sentence concurrent with any time remaining on the sentence he was already serving on another case. Defendant now appeals as of right. We affirm.

On appeal, defendant first argues that the trial court abused its discretion in denying his motion for a new trial because the jury verdict was against the great weight of the evidence. Specifically, defendant claims that in light of the complainant's lack of credibility, the absence of corroborating evidence, and the trial judge's noted surprise by the verdict, the court should have granted his motion for a new trial. We disagree.

This Court reviews a trial court's grant or denial of a motion for new trial for an abuse of discretion. *People v Lemmon*, 456 Mich 625; 576 NW2d 129 (1998). Where the trial court determines that the verdict is against the great weight of the evidence, a new trial may be granted on some or all of the issues. MCR 2.611(A)(1)(e); MCR 6.431(B); MCL 770.1; MSA 28.1098. However, such motions are disfavored and should only be granted when the evidence preponderates so

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

heavily against the verdict that a miscarriage of justice would otherwise result. *Id.* at 639, 642. When determining whether a verdict is against the great weight of the evidence, this Court must examine the entire body of proofs. *Id.* at 625. While resolution of this issue usually involves matters of credibility or circumstantial evidence which the court may consider on a motion for new trial, if there is conflicting evidence, the question of credibility is generally left for the trier of fact. *Id.* at 642-643. In order to resolve whether a trial court abused its discretion in denying a motion for new trial, this Court must examine the reasons given by the court for its ruling to determine whether such reasons are legally recognized and supported by any reasonable interpretation of the record. *People v Bart (On Remand)*, 220 Mich App 1, 11; 558 NW2d 449 (1996).

We are convinced that the trial court's ruling was not an abuse of discretion because its logic and reasoning articulated on the record for denying the motion was supported by the evidence. As accurately noted by the prosecutor during arguments, many of the inconsistencies in the complainant's testimony related to the codefendants, both of whom were acquitted, and are not at issue in this appeal. Moreover, despite her inconsistent statements, the complainant repeatedly maintained that defendant forced her to engage in sexual intercourse and oral sex with him against her will. She likewise insisted that he used physical force and threats of force to achieve his objective. In fact, there were visible marks on her neck and face indicating that defendant used force to coerce her into having sex with him. In addition, defendant admitted that he went to the complainant's home for the sole purpose of "creeping," which he explained meant to have sex with an undesirable person. Finally, medical testing revealed that defendant's DNA matched that found in the complainant. Therefore, based on this evidence, we find that the facts and circumstances justified the verdict and refute defendant's claim that it was against the great weight of the evidence.

Next, defendant argues that the trial court erred in denying his motion for directed verdict because there was insufficient evidence that he committed the charged offense. He contends that the complainant's various lies about what actually happened on the day in question were hardly sufficient to prove the elements of the crime beyond a reasonable doubt. Again, we disagree.

When reviewing a trial court's ruling on a motion for directed verdict, this Court considers the evidence presented by the prosecution up until the motion was made in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the offense were proven beyond a reasonable doubt. *People v Vincent*, 455 Mich 110, 121; 565 NW2d 629 (1997); *People v Warren*, 228 Mich App 336, 345-346; 578 NW2d 692 (1998). A defendant may move for a directed verdict at the close of the prosecution's case on the basis that the evidence is legally insufficient to support a conviction. MCR 6.419(A); *Lemmon, supra* at 633-634. In ruling on the motion, circumstantial evidence and reasonable inferences drawn from the evidence may be sufficient to prove the elements of the offense. *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). However, the court may not weigh the evidence or assess the credibility of witnesses at this time, despite the apparent inconsistencies or ambiguity in the testimony. *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997). Matters of credibility are left for the trier of fact to resolve. *People v Pena*, 224 Mich App 650, 659; 569 NW2d 871 (1997), modified on other grounds 457 Mich 883 (1998).

Defendant's primary argument in support of his claim of error is that the complainant's testimony was inconsistent and wholly incredible. Defendant did not otherwise prove or even allege that the evidence was insufficient to establish the elements of the offense. This Court, as well as the Supreme Court, has repeatedly held that when considering a motion for directed verdict, viewing the evidence in the light most favorable to the prosecution obviously includes assuming that the testimony of all prosecutorial witnesses, including the complainant, are credible. *Bart, supra* at 7 n 2; *Mehall, supra* at 6. Thus, because defendant did not provide any grounds for granting his motion other than that the complainant was not credible, the trial court properly denied his motion for directed verdict. Moreover, for the same reasons that defendant's motion for new trial was properly denied, we hold that the trial court did not err in denying defendant's motion for directed verdict. When viewing the evidence in the light most favorable to the prosecution, there was ample evidence to find that the elements of the offense were proven beyond a reasonable doubt to support defendant's conviction.

Defendant next challenges the trial court's decision to sentence him as an adult offender rather than a juvenile. He asserts that the trial court's factual findings on the six statutory factors were clearly erroneous, and the court's ultimate conclusion that defendant should be sentenced as an adult was an abuse of discretion because the record did not support the decision. When reviewing a trial court's decision to sentence a minor as an adult offender, this Court applies a bifurcated standard of review. *People v Cheeks*, 216 Mich App 470, 474; 549 NW2d 584 (1996). First, this Court reviews the trial court's factual findings under the clearly erroneous standard. *Id.*; MCR 2.613(C). Then, this Court reviews the trial court's ultimate decision to sentence defendant as an adult for an abuse of discretion. *Id.*; *People v Lyons (On Remand)*, 203 Mich App 465, 468; 513 NW2d 170 (1994).

When deciding whether to sentence a minor defendant as a juvenile or adult offender, the trial court must conduct a juvenile sentencing hearing to determine how the best interests of the defendant as well as the public would be served. MCL 769.1(3); MSA 28.1072(3); MCR 6.931(A); *Cheeks, supra* at 474. The six statutory factors considered by the court in making this determination are as follows:

- (a) The prior record and character of the juvenile, his or her physical and mental maturity, and his or her pattern of living.
- (b) The seriousness and the circumstances of the offense.
- (c) Whether the offense is part of a repetitive pattern of offenses which would lead to 1 of the following determinations:
 - (i) The juvenile is not amenable to treatment.
 - (ii) That despite the juvenile's potential for treatment, the nature of the juvenile's delinquent behavior is likely to disrupt the rehabilitation of other juveniles in the treatment program.

(d) Whether, despite the juvenile's potential for treatment, the nature of the juvenile's delinquent behavior is likely to render the juvenile dangerous to the public if released at the age of 21.

(e) Whether the juvenile is more likely to be rehabilitated by the services and facilities available in adult programs and procedures than in juvenile programs and procedures.

(f) What is in the best interests of the public welfare and the protection of the public security. [MCL 769.1(3); MSA 28.1072(3); MCR 6.931(E)(3)(a)-(f).]

The prosecutor has the burden of proving by a preponderance of the evidence that the best interest of the juvenile and the public would be served by sentencing the minor as an adult offender. *Cheeks, supra* at 475.

Here, defendant contends that the trial court's decision was based on erroneous findings of fact. We disagree. Both the prosecutor and defendant agreed that the court could consider the presentence report and investigation report prepared for defendant in connection with a prior case in which defendant was convicted of first- and third-degree criminal sexual conduct only a few months earlier. In that case, defendant was sentenced as an adult offender, rather than a juvenile, and was incarcerated at the time of this trial. Thus, because the two incidents occurred within a few days, and the sentencing for each conviction occurred within a few months, defendant agreed that it was useless to conduct a new investigation and report. He had been incarcerated since the first report was drafted, and nothing relative to defendant's criminal background or social history had changed. Our review of the reports and information submitted to the court all support the court's factual findings. Accordingly, we reject defendant's contention that the trial court's findings of fact were clearly erroneous.

We also reject defendant's argument that the trial court's ultimate decision to sentence defendant as an adult was an abuse of discretion. The offense committed here was of a serious and dangerous nature. Moreover, this was not defendant's first encounter with the criminal justice system, and more importantly, this was not his first conviction for criminal sexual conduct. Indeed, an examination of defendant's prior record reveals that he has an assaultive and predatory personality with a history of degrading and offending women.

However, although the seriousness and circumstances of an offense are important factors that the court must consider, they are not the only factors that bear on the decision. The best interest of the public welfare and protection of society is also a vital consideration. While there is typically a conflict between the best interests of public welfare and the interests of the defendant, courts must remember that "the ultimate goal of sentencing is to protect society through just and certain punishment reasonably calculated to rehabilitate." *Cheeks, supra* at 478-479 (citing *People v Schultz*, 435 Mich 517, 532; 460 NW2d 505 [1990]). Given this important objective, we do not believe that the trial court's decision to resolve the conflict in favor of public safety was improper. Defendant has already demonstrated his lack of respect for others, particularly women, and is unable to accept responsibility for his behavior. He lacked any showing of remorse and has not apologized to the victim for her

suffering. Therefore, because the record supports the conclusion that, on balance, the best interests of the juvenile and the public would be served by sentencing defendant as an adult, we cannot say that the trial court's decision was an abuse of discretion.

Finally, defendant claims that his ten-year minimum sentence was disproportionate to the severity of the offense committed. He argues that the crime was not one which warranted a sentence at the high end of the guideline range, particularly since it was not a violent offense. Sentencing decisions are subject to review by this Court on an abuse of discretion standard. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990). A sentence constitutes an abuse of the trial court's discretion if it violates the principle of proportionality. *Id.* The principle of proportionality requires sentences to be "proportionate to the seriousness of the circumstances surrounding the offense and the offender." *Id.* at 636.

While we acknowledge that even a sentence within a guideline range can still be deemed an abuse of discretion if it is disproportionately severe under the given circumstances, sentences within the guideline range are typically presumed proportionate, and the burden is on the defendant to prove otherwise. *People v Broden*, 428 Mich 343, 354-355; 408 NW2d 789 (1987); *People v Bailey (On Remand)*, 218 Mich App 645, 647; 554 NW2d 391 (1996). We are not convinced that defendant has met his burden of overcoming the presumption. The sentencing guidelines recommend a minimum sentence of five to ten years for third-degree criminal sexual conduct involving force or coercion. Defendant was sentenced to a ten-year minimum sentence, the high end of the range. However, given the number of aggravating circumstances in this case, particularly that defendant's conduct was premeditated, he had a dominant role in orchestrating the rape of the complainant, he used violence in order to coerce compliance from the complainant, he has a prior criminal record involving sexual assaults, and he has shown no remorse or regret for his behavior, we hold that the sentence imposed by the trial court was not disproportionate and did not constitute an abuse of discretion.

Affirmed.

/s/ David H. Sawyer
/s/ Richard A. Bandstra
/s/ Robert B. Burns