

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of DEMETRIUS BEAVERS, Minor.

UNPUBLISHED
June 27, 2000

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

DEMETRIUS BEAVERS,

Respondent-Appellant.

No. 211646
Wayne Circuit Court
Family Division
LC No. 97-358309

Before: Hood, P.J., and Gage and Whitbeck, JJ.

PER CURIAM.

Respondent Demetrius Beavers appeals as of right from an order of disposition in a juvenile delinquency proceeding. Following a bench trial, the trial court adjudicated Beavers guilty of fourth-degree criminal sexual conduct, MCL 750.520e(1); MSA 28.788(5)(1), and placed him on probation. Among other conditions imposed, the trial court ordered Beavers to participate in sex offender training and to register as a sex offender. We reverse.

I. Basic Facts And Procedural History

This case arises out of an incident at the Emmerson School in the City of Detroit in May 1997, where twelve-year-old Beavers was a student. According to the complainant in this case, a school employee, Beavers touched her in a sexual manner. Beavers claimed, on the other hand, that he merely bumped into the victim in the hallway. Later that summer, in August, the petitioner filed a petition in the juvenile division of the probate court alleging that “[o]n May 16, 1997, in the City of Detroit, [respondent] did engage in sexual contact with [the victim], and the Juvenile used force or coercion to accomplish the sexual contact, contrary to MCL 750.520e(1).”

The case proceeded to the adjudicatory phase without a jury in late February 1998. The petitioner’s case consisted solely of the complainant’s testimony. The complainant said that on the day

in question, she saw Beavers in the hallway and admonished him “to stop playing” and “go to class.” Later, around lunch time, the complainant was walking out of the school’s main office and, as she “reached over to close the door, [she] felt someone behind [her] put their hand . . . back between [her] legs” and “squeeze” her “real hard” between the legs. The complainant also said that the perpetrator “felt [her] vagina,” and when she turned around to see who had touched her, she saw Beavers. The complainant, enraged, hit Beavers several times and asked him “why did he do that.” According to the complainant, Beavers first said that he thought the victim was a student, but then said that he “didn’t do anything,” to which she replied, “yes, you did.” The complainant ordered Beavers to go to the principal’s office before she informed the school counselor about what had occurred.

When Beavers took the witness stand in his own defense, he, predictably, told a different version of the events in question. According to Beavers, he was walking backward down the hallway talking to his friend Corey White when he bumped into the complainant. He said “excuse me” to her, but the complainant “started hitting [him].” Then, the complainant “hollered why did you do it. And she said you know what you did and she took me over to the main office.” Beavers denied both reaching between the complainant’s legs and intentionally touching her, which he claimed was impossible to do because at the time he was holding an ice cream treat and a beverage, one in each of his hands.

After Beavers testified, his attorney indicated to the court that he had “subpoena[ed] a young man by the name of Corey White who appears from all testimony to be a . . . rather disinterested observer in all this, the person who was kind of walking down the hall with my client.” Because White had not appeared at court, defense counsel requested an adjournment so that he could “attempt to locate Mr. Corey White and have him brought in here.” The trial court, which noted that White had been personally served with notice of the proceedings, granted a three-week adjournment to give Beavers’ attorney another opportunity to call White to testify.

The adjudication reconvened in mid-March 1998 at approximately 8:30 a.m., at which time Beavers’ attorney indicated that White had been served with notice of the proceedings, but still had failed to appear. The trial court rescheduled the hearing for later in the day, but when the parties reconvened, White had not appeared. Beavers’ attorney, who briefly recounted the history of the notice to White regarding the proceedings, stated, “At this point, I think we have no choice but to continue on without that witness.” Beavers then rested.

After both sides presented closing arguments, the following exchange occurred:

MR. McGUIRE [Beavers’ attorney]: Excuse me a second. Your Honor, I’ve just been told that Corey White entered the courtroom. I don’t know at this point the procedure, or what the court wants to do.

THE COURT: The court has moved ahead. What is there for the court to do?

MR. McGUIRE: And we have rested. I don’t know. I would ask the court if we would be allowed to reopen our case at this point?

THE COURT: Talk to the prosecutor [i.e., the petitioner].

MR. BROWN [The petitioner]: At this point Your Honor, they've rested.

MR. McGUIRE: Thank you.

The trial court did not make a specific ruling on the motion to reopen proofs and did not take any additional testimony. Rather, the trial court simply stated that "the court finds the allegations of the Petition were substantiated" and continued the matter "for disposition."

At the dispositional hearing in mid-April 1998, Beavers' attorney informed the trial court that he had spoken with White after the adjudication and White "indicated to me that as an offer of proof . . . that he was going to testify consistently with what [Beavers] testified to." Although White had not prepared an affidavit, Beavers' attorney then moved for a new trial in light of White's comments and information that "the Complainant in this matter apparently made a similar complaint against another child at the school."¹ In the alternative, Beavers' attorney asked the trial court "to re-open the proofs as they stand." The trial court told Beavers' attorney, "Now, if you do have a [written] motion, I will look at it when I get it . . . but I don't think I should put off disposition today because of that." The trial court then told the parties that it was "going to place the youngster on probation and I am going to have him to attend the S.A.I.T. Program at the Clinic for Child Study, to be followed by a referral to the Children's Center if indicated."

Soon after the dispositional hearing, Beavers' mother, Tina Beavers, filed a motion for a new trial alleging that Beavers "did not have the chance to have his witness in court. Also [the victim] has charge[d] an[other] student with the same charge as [Beavers]." Apparently, there was no oral argument on this motion, and the trial court denied the motion in late April 1998.

II. Arguments On Appeal

Beavers challenges a number of aspects of his trial. First, he claims that there was insufficient evidence to prove that he committed the offense alleged. Second, he claims that the trial court's brief factual findings were insufficient. Third, he claims that the trial court erred in denying him an opportunity to present White's testimony. Finally, Beavers argues that requiring him to register as a sex offender under the Sex Offenders Registration Act, MCL 28.721 *et seq.*; MSA 4.475(1) *et seq.* constitutes cruel or unusual punishment. Because we find the issue concerning his motion to reopen the proofs both persuasive and dispositive, we address it alone. We do, however, note in passing that this Court recently rejected the same cruel or unusual punishment argument Beavers makes in this appeal. *In re Ayres*, 239 Mich App 8, 21; 608 NW2d 132 (1999).

¹ Beavers' counsel admitted that Beavers' mother only learned the day before the dispositional hearing after talking "to a few people around the school" that "someone said she made a similar complaint against [his/her] child."

III. Reopening Proofs

A. Standard Of Review

The trial court possesses the discretion to determine whether to grant a party's motion to reopen the proofs at trial. *People v Lay*, 336 Mich 77, 83; 57 NW2d 453 (1953). Therefore, we review its decision not to reopen the proofs when White walked into the courtroom for an abuse of that discretion. *People v Collier*, 168 Mich App 687, 698; 425 NW2d 118 (1988).

B. Exercise Of Discretion

Generally speaking, when considering a motion to reopen proofs, a trial court should consider whether doing so would give the moving party an "undue advantage" or "surprise or prejudice" the nonmoving party. *People v Keeth*, 193 Mich App 555, 560-561; 484 NW2d 761 (1992), citing *Collier, supra*. Ordinarily, this Court adopts an "attitude" of "noninterference" when addressing a trial court's exercise of discretion in this area. *Knoper v Burton*, 12 Mich App 644, 648; 163 NW2d 453 (1968), rev'd on other grounds 383 Mich 62 (1970). However, in this case, the record is silent regarding whether the trial court considered *any* of the factors relevant to a motion to reopen proofs from which we could determine if it was exercising its discretion properly.

Indeed, the record indicates that the trial court may have attempted to delegate its authority to rule on the motion to the petitioner by asking Beavers' attorney to speak with opposing counsel. If the trial court merely intended to give the Beavers' attorney an opportunity to secure opposing counsel's stipulation to reopen proofs, the trial court did not say so. Nor did the trial court attempt to reinsert itself into the decision on the issue by explicitly granting or denying the motion, which would imply that it intended to retain the authority to decide whether to reopen proofs and recognized that doing so was its duty.

Rather, we gather from the way the parties dropped the subject at trial without an explicit ruling on the motion that the parties may have believed that the trial court had put the decision in the petitioner's hands. That belief, to a limited extent, would also explain why the petitioner did not attempt to articulate any reason for the trial court to deny the motion but, nevertheless, the parties moved on as if the trial court itself had denied the motion when the petitioner made a statement suggesting that reopening proofs would not be proper. We cannot emphasize enough that, although the trial court has discretion when ruling on a motion to reopen proofs, *Lay, supra*, it must exercise that discretion and may not, under any circumstances, leave such a decision to the parties. Simply put, "[t]he trial court's delegation of its discretionary powers to the parties constitutes reversible error." *People v Johnson*, 85 Mich App 181, 184; 270 NW2d 734 (1978).

Even if the trial court did not, in fact, delegate the decision on the motion to the petitioner, we question whether the trial court, on the basis of the record and arguments before it, could properly deny the motion. The petitioner did not argue that the trial court should deny the motion on the basis of prejudice, undue advantage, or surprise even in the loosest terms. Instead, the petitioner merely noted that Beavers had already rested. A motion to reopen proofs need only be made if the proofs are

closed, which occurs after a party rests. Even on appeal, the petitioner fails to identify *any* prejudice, undue advantage, or surprise that could have resulted from allowing White to testify. Given that the parties had been attempting to obtain his presence in the trial court, we see very little likelihood that the petitioner could legitimately claim surprise or undue advantage to Beavers from White's testimony. We understand that the trial court was generous in allowing continuances to locate White, and certainly there had to be an end to the proceedings at some time. However, the only self-evident prejudice that could flow from allowing White to testify would be the additional time it would take to examine him. We do not discount the possibility that prejudice stemming from delay may constitute sufficient grounds to deny a motion to reopen proofs in some cases, even though delay is inherent in any decision to reopen proofs. However, because the underlying incident in this case was so brief, White's testimony regarding what he witnessed was also likely to be brief and any delay not overly burdensome. Further, the petitioner never argued that prejudice, whether because of delay or some other reason, would justify denying the motion.

Without saying so directly, the petitioner essentially concedes that the trial court erred in the way it dealt with this motion. Yet the petitioner still urges this Court to affirm, relying on a simple statement, without discussion, that preventing White from testifying did not harm Beavers. We cannot agree. The trial in this case was the very essence of a credibility contest, with only the complainant and the respondent providing their accounts of what occurred. Critically, both Beavers' testimony and the complainant's testimony suggest that neither was in a position to see what occurred. Only White, who was walking with Beavers, was likely to have seen what happened. Although White's testimony might be unconvincing in the end, it was relevant and important to the trial court's decision in this case. Because the trial court did not place any of its logic on the record, we see no legitimate reason for preventing White from testifying when he appeared in the courtroom.

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Harold Hood

/s/ Hilda R. Gage

/s/ William C. Whitbeck