

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHANNON VEGAS REDDICK,

Defendant-Appellant.

UNPUBLISHED

May 25, 2004

No. 246803

Wayne Circuit Court

LC No. 02-008380

Before: Schuette, P.J., and Bandstra and Cooper, JJ.

PER CURIAM.

Defendant Shannon Vegas Reddick appeals of right his jury trial convictions for one count of first-degree criminal sexual conduct¹ and three counts of second-degree criminal sexual conduct.² Defendant was sentenced to ten to twenty years' imprisonment for his first-degree CSC conviction and ten to fifteen years' imprisonment for each second-degree CSC conviction. We affirm defendant's convictions but remand for further proceedings consistent with this opinion.

I. Facts

The circumstances surrounding defendant's conviction arose from the forcible rape of his thirteen-year-old cousin, Kendra Reddick. At the time of the attack, defendant lived in a home with Kendra, her mother Peggy Reddick, her sibilings, and her grandmother. Defendant shared a room in the basement with his mother, Robin Reddick. Although the attack occurred in August or September of 2001, Kendra told no one until the following spring when she told a cousin, her half-sister, a member of her church, and her mother. Kendra had often told lies and was afraid her mother would not believe her. Defendant was, therefore, not arrested until June of 2002. While in custody, defendant was interviewed by Detroit police officers Tremayne Burton and Otis Combs and admitted to having intercourse with Kendra. However, defendant claimed that this intercourse was consensual.

¹ MCL 750.520b(1)(b)(i) (victim between thirteen and sixteen years of age and a member of defendant's household).

² MCL 750.520c(1)(a) (victim under the age of thirteen).

II. Evidentiary Issues

A trial court's evidentiary rulings are reviewed for an abuse of discretion.³ An abuse of discretion will only be found if an unprejudiced person would say there was no justification or excuse for the ruling based on the facts presented.⁴

A. Victim Motive

Defendant contends that he was denied his right to a fair trial, as the trial court prevented him from offering testimony regarding Kendra's possible motive to fabricate the charges against him. Defense counsel attempted to elicit this testimony from defendant, but the trial court refused to allow the question. However, the substance of the evidence was not apparent from the context of defense counsel's question and defendant failed to preserve this issue by making a contemporaneous offer of proof regarding the evidence.⁵ Therefore, our review is limited to plain error affecting substantial rights.⁶

All relevant evidence is generally admissible, whereas irrelevant evidence is not.⁷ Evidence is relevant if it has any tendency to make the existence of a fact that is of consequence to the determination of the action more or less probable than it would be without the evidence.⁸ Proof of bias is almost always relevant, as it is the jury's role to assess witness credibility.⁹ As Kendra accused defendant of committing CSC, her possible motives for fabricating the charges would also be relevant. Accordingly, the trial court erroneously excluded defendant's testimony regarding Kendra's possible motives.

However, we find that the error does not warrant reversal, as the evidence reached the jury. Defendant testified on cross-examination that Kendra, Peggy Reddick, and the police officers lied. Defendant's cousin testified that Kendra wanted to move in with her because Robin had reprimanded her. Furthermore, defense counsel asserted in closing argument that Kendra fabricated the charges against defendant out of revenge toward Robin and to get out of her house.

B. Prior Arrest

Defendant also asserts that he is entitled to a new trial because Officer Burton offered evidence implying that defendant had been arrested before. We disagree. An isolated, unresponsive, and volunteered answer to a proper question typically does not deny a defendant

³ *People v Sabin (After Remand)*, 463 Mich 43, 60; 614 NW2d 888 (2000).

⁴ *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

⁵ MRE 103(a)(2); *People v Grant*, 445 Mich 535, 545-546; 520 NW2d 123 (1994).

⁶ *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

⁷ MRE 402.

⁸ MRE 401.

⁹ *People v Layher*, 464 Mich 756, 764-765; 631 NW2d 281 (2001).

the right to a fair trial, and is unlikely to result in significant prejudice.¹⁰ However, police officers have a special obligation not to volunteer prohibited information. We scrutinize an officer's statement to ensure that it does not "venture[] into forbidden areas which may prejudice the defense."¹¹

Officer Burton had been a police officer for seven years, and therefore, should have known that evidence connecting a defendant to other crimes is highly prejudicial, and therefore, inadmissible.¹² However, in light of the fact that defendant admitted to having intercourse with Kendra, the admission of Officer Burton's remark would not have been outcome determinative. We, therefore, reject defendant's contention that he is entitled to a new trial.

C. Custodial Statement

Defendant argues that his custodial statement should be suppressed, as his interview was not recorded. We disagree. As defense counsel moved for suppression of defendant's statement on different grounds at the *Walker*¹³ hearing, our review is again limited to plain error affecting substantial rights.¹⁴

Neither the Due Process Clauses of the United States or Michigan Constitutions require police officers to record custodial interrogations.¹⁵ We are not required to create constitutional rights exceeding federal standards, and only a minority of states require the recording of custodial interrogations.¹⁶ Therefore, the trial court properly admitted defendant's statement, regardless of the fact that it had not been recorded.

Defendant argues in propria persona that the trial court erred in denying his motion to suppress his custodial statement following the *Walker* hearing. We disagree. We review a trial court's factual findings on a motion to suppress for clear error.¹⁷ "To the extent that a trial court's ruling on a motion to suppress involves an interpretation of a constitutional standard to

¹⁰ *People v Allen*, 429 Mich 558, 656; 420 NW2d 499 (1988); *People v Griffin*, 235 Mich App 27, 36; 597 NW2d 176 (1999).

¹¹ *People v Holly*, 129 Mich App 405, 415-416; 341 NW2d 823 (1983).

¹² See *id.* at 416.

¹³ *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

¹⁴ *Carines, supra* at 763-764; *Griffin, supra* at 36.

¹⁵ *People v Geno*, ___ Mich App ___, ___ NW2d ___ (Docket No. 241768, issued April 27, 2004), slip op at 2, citing *California v Trombetta*, 467 US 479; 104 S Ct 2528; 81 L Ed 2d 413 (1984); *People v Fike*, 228 Mich App 178; 577 NW2d 903 (1998).

¹⁶ *Id.*, citing *Fike, supra* at 185.

¹⁷ *People v Oliver*, 464 Mich 184, 191; 627 NW2d 297 (2001).

uncontested facts, our review is de novo.”¹⁸ Clear error exists when this Court is left with a firm and definite conviction that a mistake was made.¹⁹

The voluntariness of a confession is determined by considering the totality of the circumstances, including the duration of the detention and questioning, the defendant’s age, intelligence and experience, the defendant’s physical and mental state, and whether the defendant was threatened.²⁰ At the time of the *Walker* hearing, defendant was nineteen or twenty years old, had completed high school, and was able to read and write. Defendant was arrested at 1:30 a.m., but was in custody less than an hour before his two-hour interrogation began. Defendant waived his *Miranda*²¹ rights before the interrogation. No evidence was presented that defendant was in ill health or injured, and defendant did not appear to be under the influence of drugs or alcohol. Defendant asserted that he only made the statement because Officer Burton threatened him. However, the trial court, as the finder of fact, found that defendant had not been threatened into making his statement. We defer to the trial court’s assessment of witness credibility.²² Accordingly, we conclude that the trial court properly denied defendant’s motion to suppress his custodial statement as it was voluntary under the totality of the circumstances.

IV. Motion for Substitution of Trial Counsel

Defendant contends in propria persona that the trial court abused its discretion when it denied his motion to substitute counsel. We disagree. A decision regarding substitution of counsel will not be disturbed absent an abuse of discretion.²³

An indigent defendant is constitutionally guaranteed the right to appointed counsel,²⁴ but “is not entitled to have the attorney of his choice appointed simply by requesting that the attorney originally appointed be replaced.”²⁵ Rather, appointment of substitute counsel is justified only upon a showing of good cause and where the judicial process will not be unreasonably disrupted by the substitution.²⁶ “Good cause exists where a legitimate difference of opinion develops between a defendant and his appointed counsel with regard to a fundamental

¹⁸ *People v Attebury*, 463 Mich 662, 668; 624 NW2d 912 (2001).

¹⁹ *People v McElhaney*, 215 Mich App 269, 273; 545 NW2d 18 (1996).

²⁰ *People v Wells*, 238 Mich App 383, 386-387; 605 NW2d 374 (1999).

²¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 694 (1966).

²² *People v Daoud*, 462 Mich 621, 629; 614 NW2d 152 (2000).

²³ *People v Mack*, 190 Mich App 7, 14; 475 NW2d 830 (1991).

²⁴ *People v Ginther*, 390 Mich 436, 441; 212 NW2d 922 (1973).

²⁵ *People v Traylor*, 245 Mich App 460, 462; 628 NW2d 120 (2001).

²⁶ *Id.* at 462.

trial tactic.”²⁷ We note, however, that disagreements fairly characterized as matters of professional judgment or trial strategy do not justify substitution.²⁸

Defendant moved for the substitution of counsel claiming that trial counsel failed to present witnesses at his preliminary examination. However, this decision is a matter of trial strategy, which does not justify the substitution of counsel.²⁹ Defendant also contended that trial counsel failed to share exculpatory documents with him. However, the record indicates that trial counsel provided defendant with a copy of the entire discovery packet. Furthermore, defendant failed to verbally request substitute counsel until three days prior to the start of trial. Substitution at that late date would have unreasonably disrupted the judicial process. Accordingly, the trial court properly denied defendant’s motion for substitute counsel.

Defendant also argues, for the first time on appeal, that he was entitled to substitute counsel, as trial counsel failed to file a motion for an evidentiary hearing and a “motion for alibi,” and failed to object to defendant’s sentence. We disagree. Defendant has failed to identify anything in the trial record to support his assertion that he requested trial counsel file a motion for an evidentiary hearing or the purpose of such hearing.³⁰ Furthermore, defense counsel did file a Notice of Alibi and an Amended Notice of Alibi and both of the listed witnesses testified at trial, rendering defendant’s argument meritless. Defendant’s argument that the trial court erred in denying his motion for substitute counsel based on the failure to object to defendant’s sentence is misplaced as defendant requested substitute counsel before his trial even began. Defendant never moved the trial court for a *Ginther*³¹ hearing or a new trial to present a claim of ineffective assistance of counsel.³² As defendant failed to identify any plain error affecting substantial rights, we reject defendant’s contention that he was entitled to substitute counsel.³³

V. Prosecutorial Misconduct

Defendant alleges various instances of prosecutorial misconduct. Prosecutorial misconduct claims are reviewed on a case by case basis, examining any remarks in context, to determine if the defendant received a fair and impartial trial.³⁴ Because defendant failed to object to the alleged instances of misconduct, our review is limited to plain error affecting

²⁷ *Id.*, quoting *Mack*, *supra* at 14.

²⁸ *Id.* at 463.

²⁹ *People v Russell*, 254 Mich App 11, 14; 656 NW2d 817 (2002).

³⁰ MCR 7.212(C)(7).

³¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

³² *People v Sabin*, 242 Mich App 656, 658; 620 NW2d 19 (2000).

³³ *Carines*, *supra* at 763-764.

³⁴ *People v Aldrich*, 246 Mich App 101, 11; 631 NW2d 67 (2001).

substantial rights.³⁵ “No error requiring reversal will be found if the prejudicial effect of the prosecutor’s comments could have been cured by a timely instruction.”³⁶

A. Cross-Examination

Defendant contends that the prosecutor improperly questioned him on cross-examination about whether Kendra, Peggy Reddick, and two police officers were lying. Determinations regarding the credibility of witnesses are to be made by the trier of fact, not the defendant.³⁷ It is, therefore, improper for a prosecutor to ask a defendant to comment on the credibility of prosecution witnesses.³⁸

However, reversal is not warranted under the circumstances. Defendant directly controverted the testimony against him during direct examination by denying that he had ever touched Kendra in a sexual manner or had intercourse with her and by asserting that the police coerced him into making his statement. Although the prosecutor’s questions were poorly phrased, they did not result in unfair prejudice to defendant as the questions directly responded to defendant’s testimony. Furthermore, any potential undue prejudice could have been remedied by a curative instruction.³⁹

B. Vouching

Defendant also argues that the prosecutor improperly vouched for the credibility of prosecution witnesses during closing and rebuttal arguments. A prosecutor enjoys wide latitude in fashioning arguments and may argue the evidence and all reasonable inferences arising from it.⁴⁰ A prosecutor may not vouch for the credibility of a witness, however, by conveying that he has some special knowledge that the witness is testifying truthfully.⁴¹ But, where the jury is faced with a credibility question, the prosecutor is free to argue a witness’s credibility from the evidence.⁴² We further note that the trial court instructed the jury to decide the case solely on the evidence, and that the remarks of counsel were not evidence. Jurors are presumed to follow their instructions.⁴³

³⁵ *Carines*, *supra* at 763-764.

³⁶ *People v Shutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000).

³⁷ *People v Gonzalez*, 468 Mich 636, 640-641; 664 NW2d 159 (2003).

³⁸ *People v Buckey*, 424 Mich 1, 17-18; 378 NW2d 432 (1985); *People v Knapp*, 244 Mich App 361, 384; 624 NW2d 227 (2001).

³⁹ *Buckey*, *supra* at 18; *Knapp*, *supra* at 385.

⁴⁰ *Shutte*, *supra* at 721.

⁴¹ *Knapp*, *supra* at 382.

⁴² *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996).

⁴³ *People v Graves*, 458 Mich 476, 486-487; 581 NW2d 229 (1998).

During cross-examination, defense counsel questioned Kendra regarding her statement to the police, her relationship with her half-sister, the timing of her decision to tell family members of the incident, and her tendency to be untruthful. Defense counsel also questioned the police officers about their interview methods and the reasons that it took almost two hours to transcribe a two-page statement. Defense counsel, not the prosecution, raised the issue of witness credibility. Although the prosecutor improperly argued that Kendra testified to actual events, this isolated comment does not warrant reversal.

VI. Cumulative Error

We reject defendant's contention that he was denied his due process right to a fair trial by the cumulative effect of the preceding alleged errors. Because we have determined that defendant was not prejudiced by any potential errors, "this issue is without merit," and we decline to review it.⁴⁴

VII. Jail Credit

Defendant contends for the first time on appeal that the Judgment of Sentence should be amended to reflect 146 days of jail time served. We agree. Defendant's presentence investigation report erroneously lists June 22, 2002 as the date of defendant's arrest. The Judgment of Sentence indicates that defendant received 144 days of jail credit. It is clear from the record, however, that defendant was arrested on June 20, 2002, and is, therefore, entitled to 146 days of jail credit. This error affects the length of defendant's imprisonment, and therefore, defendant's substantial rights. Moreover, the prosecution does not object to amendment of the Judgment of Sentence. We remand to allow the trial court to amend the Judgment of Sentence.

VIII. Sentence

Defendant argues in propria persona that his sentence represents an improper departure from the sentencing guidelines, violates the two-thirds rule, and is based on an inaccurate PRV score. We reject defendant's contention that the trial court departed from the sentencing guidelines when it imposed defendant's minimum sentence. Pursuant to MCL 777.62, defendant's minimum sentencing range is 81 to 135 months. Defendant's minimum sentence of ten years is clearly within the minimum sentencing guidelines range of 81 to 135 months. Therefore, we may not remand for resentencing on this ground.⁴⁵

We also reject defendant's assertion that his sentence violates the two-thirds rule. A court may not impose a minimum sentence exceeding two-thirds of the statutory maximum.⁴⁶ The statutory maximum sentence for first-degree CSC is life or any term of years in prison.⁴⁷ Defendant's minimum sentence of ten years is clearly less than two-thirds of his maximum

⁴⁴ *People v Werner*, 254 Mich App 528, 544; 659 NW2d 688 (2002).

⁴⁵ MCL 769.34(10); *People v Babcock*, 469 Mich 247, 261; 666 NW2d 231 (2003).

⁴⁶ MCL 769.34(2)(b); *Babcock*, *supra* at 255 n 7.

⁴⁷ MCL 750.520b(h)(2).

sentence of twenty years. Therefore, defendant is clearly not entitled to resentencing on this ground.

However, defendant also challenges the trial court's scoring of PRV 2.⁴⁸ As defendant failed to challenge the scoring of the sentencing guidelines at or before sentencing,⁴⁹ our review is limited to plain error affecting substantial rights.⁵⁰

In December of 1999, defendant was convicted of two counts of breaking and entering with intent to commit a felony or larceny pursuant to MCL 750.110, a Class D felony.⁵¹ In calculating defendant's current sentence, the trial court scored ten points for PRV 2, taking into account two prior low severity felony convictions pursuant to MCL 777.52(1)(c). Low severity felony convictions are felonies of Classes E, F, G, or H.⁵² However, a Class D felony is a high severity felony conviction.⁵³ A defendant with two prior high severity felony convictions should be scored fifty points for PRV 1.⁵⁴ Defendant, however, received a PRV 1 score of zero. If calculated correctly, defendant's PRV score would have been increased to seventy.

Using the corrected total PRV score of seventy and the OV score of twenty, defendant's recalculated minimum sentencing guidelines range is 108 to 180 months for his Class A felony conviction. Defendant's minimum sentence of ten years falls within the recalculated range. Resentencing is unnecessary, however, if correction of an erroneous score would not change the minimum sentencing guidelines range,⁵⁵ or if the trial court would have imposed the same sentence regardless of the error.⁵⁶

Although the trial court's error changed the minimum sentencing guidelines range, it does not warrant reversal. This Court has held that an erroneous OV score that *increases* a defendant's sentence seriously affects the fairness, integrity or public reputation of judicial proceedings.⁵⁷ Similarly, an erroneous PRV score increasing a defendant's sentence would seriously affect a judicial proceeding. However, the trial court's error actually *decreased*

⁴⁸ Defendant also erroneously contends that the trial court erred in calculating his OV scores because OV 11 was scored fifty points. However, defendant was scored zero points for OV 11.

⁴⁹ MCR 6.429(C); *People v McGuffey*, 251 Mich App 155, 165-166; 649 NW2d 801 (2002).

⁵⁰ *Carines*, *supra* at 763-764.

⁵¹ MCL 777.16f.

⁵² MCL 777.52(2).

⁵³ MCL 777.51(2).

⁵⁴ MCL 777.51(1)(b).

⁵⁵ *People v Houston*, ___ Mich App ___, ___ NW2d ___ (Docket No. 245889, issued April 1, 2004), slip op, p 5.

⁵⁶ *People v Mutchie*, 468 Mich 50, 51-52; 658 NW2d 154 (2003).

⁵⁷ *People v Kimble*, 252 Mich App 269, 278-279; 651 NW2d 798 (2002), lv gtd 468 Mich 870 (2003).

defendant's sentence. Defendant's substantial rights were not negatively impacted by the error, and it would be unfair to punish defendant by resentencing him within the higher range. We therefore decline to remand for resentencing.

We affirm defendant's convictions but remand to allow for the amendment of the Judgment of Sentence to reflect defendant's actual jail credit time. We do not retain jurisdiction.

/s/ Bill Schuette

/s/ Richard A. Bandstra

/s/ Jessica R. Cooper