STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLARENCE BIRCHETT,

Defendant-Appellant.

UNPUBLISHED
February 13, 2007

No. 265196
Wayne Circuit Court
LC No. 05-003963-01

Before: Kelly, P.J., and Davis and Servitto, JJ.

PER CURIAM.

Defendant appeals by right his conviction following a jury trial of two counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a) (victim under 13 years old). The trial court sentenced defendant to two concurrent terms of parolable life in prison. We affirm.

Defendant first contends that the facts presented at trial do not establish beyond a reasonable doubt that he was the perpetrator of the charged offense. We disagree.

"We review de novo challenges to the sufficiency of evidence in criminal trials to determine whether, when the evidence is viewed in the light most favorable to the prosecutor, a rational trier of fact could have found all the elements of the charged crime to have been proved beyond a reasonable doubt." *People v Bowman*, 254 Mich App 142, 151; 656 NW2d 835 (2002). In deciding whether the evidence at trial was sufficient to sustain a conviction, "[t]his Court will not interfere with the role of the trier of fact of determining the weight of the evidence or the credibility of witnesses." *People v Hill*, 257 Mich App 126, 141; 667 NW2d 78 (2003).

" 'Circumstantial evidence and the reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime. ' " *People v Bulmer*, 256 Mich App 33, 37; 662 NW2d 117 (2003), quoting *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993).

In this case, defendant lived with the victim and was her stepfather. Defendant's wife, the victim's mother, testified that on one occasion, she found defendant outside the victim's closed bedroom door with an erection wearing nothing but underwear. She further testified that defendant would not let her enter the bedroom even though the victim was crying. Defendant admitted that he would not allow his wife to enter the bedroom, but explained that he had learned in parenting class to leave the victim alone so that she could learn to be alone.

Detroit Police Department Sergeant Alma Hughes-Grubbs testified that during her interrogation of defendant, he stated he could not remember whether he sexually assaulted his stepdaughter. According to the officer, defendant also said that he wanted sex all the time and that he had a "problem" for which he wanted to seek help. Defendant denied telling the officer that he has a "problem" with sex and that he thinks about sex all the time. Rather, he testified, the officer asked if he thought about sex "a lot," and he answered with a simple "yes." The officer also testified that defendant stated he was "crazy" and knew he would go to jail for a long time. Defendant testified that he stated "the situation was making him go crazy" and that the officer, not defendant, stated that he would be "going to jail for the rest of [his] life." Likewise, defendant admitted that he did tell the officer that he was going to commit suicide, but he explained that he wanted to commit suicide because his wife had left him.

The circumstances of Sergeant Hughes-Grubbs's interrogation of defendant makes the officer's credibility a central concern.[1] However, we defer to the trier of fact's superior ability to assess witness credibility and, absent unusual circumstances not present here, will not judge it anew on appeal. *Hill*, *supra* at 141. With this in mind, and viewing all of the evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could have found beyond a reasonable doubt that defendant perpetrated the alleged abuse.

Defendant also argues that he is entitled to a resentencing because the trial court erred in its scoring of OVs 3, 4, 7, and 11. We disagree.

"A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). " 'Scoring decisions for which there is any evidence in support will be upheld.' " *Id.*, quoting *People v Elliott*, 215 Mich App 259, 260; 544 NW2d 748 (1996).

Defendant contends that the trial court erred in scoring 25 points for OV 3 because (1) there was testimony that injuries to the victim's anus and vagina did not require treatment and (2) "the only life threatening aspect of this matter was the victim's fever; which was not associated with [these injuries] in any manner." While we disagree with the trial court's reasoning, we find that the record nonetheless supports the score. There was testimony that when the victim presented to the hospital, her condition was life threatening. She "was severely dehydrated, had a high fever, was in shock, essentially, and had very significant tears in both her vaginal and anal areas." The record demonstrates that, although the victim appeared ill, defendant discouraged the victim's mother from seeking medical care. It is a fair inference that defendant delayed the victim's medical care because he was concerned that his abuse would be discovered. In this fashion, defendant's abuse contributed to the victim's life-threatening condition. Because the record supports a reasonable inference that the injuries caused by defendant at least contributed

[1] The interrogation was not recorded by video or audiotape and the officer did not write down defendant's answers. Rather, the officer paraphrased the content of the interrogation after the conversation concluded. Nor did defendant sign any statement with respect to this interrogation. No evidence shows defendant made any similar type of statements or admissions in other police interviews.

to the victim's life-threatening condition, the trial court did not abuse its discretion in scoring OV 3 at 25 points. Although the trial court gave a different reason in support of its score, we must uphold a particular score if there is *any* evidence to support it. *Hornsby, supra* at 468. Furthermore, "we will not reverse when the trial court reaches the correct result for the wrong reason." *People v Witherspoon*, 257 Mich App 329, 335; 670 NW2d 434 (2003).

OV 4 allows for scoring 10 points when a victim suffers "[s]erious psychological injury requiring professional treatment." MCL 777.34(1)(a). Ten points may also be assessed "if the serious psychological injury may require professional treatment," and "the fact that treatment has not been sought is not conclusive." MCL 777.34(2). As the trial court noted, the facts of this case, including the tender age of the victim, the drastic change in her living conditions, and the seriousness of the offense all support the conclusion that the victim may require professional psychological treatment. Thus, the trial court did not abuse its discretion by scoring defendant 10 points for OV 4.

OV 7 allows an assessment of 50 points for aggravated physical abuse if the "victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety . . . suffered during the offense." MCL 777.37(1)(a). The evidence indicates that the victim had fresh injuries to her vagina and anus and scars evidencing older injuries. Although defendant argues on appeal that the damage was described by some health professionals as superficial, other testimony indicated these injuries were prominent. The record also demonstrates that the victim had numerous bruises and scratches on various parts of her body. After reviewing the record, we are convinced that the evidence demonstrated that this young victim was treated with "excessive brutality." Thus, the trial court did not abuse its discretion in assessing 50 points for OV 7.

Defendant also argues that he was improperly scored 25 points for OV 11 because each conviction was associated with a single penetration and "[s]tatutory construction prohibits the scoring of any points under this variable under the circumstances of this case." However, this Court rejected the same argument in *People v Cox*, 268 Mich App 440, 455-456; 709 NW2d 152 (2005). Accordingly, defendant's argument fails as well.

Defendant also contends that he is entitled to resentencing because his sentence violates the principle of proportionality. Defendant does not challenge any other aspect of the trial court's departure from the sentencing guidelines range, therefore, we limit our review to whether the departure rendered the sentence proportionate to the seriousness of the defendant's conduct and his criminal history. *People v Babcock*, 469 Mich 247, 264; 666 NW2d 231 (2003). Defendant protests that he has no prior criminal history. While we acknowledge this fact, the extreme seriousness of defendant's offense in this case is difficult to put into words. We strongly disagree with defendant's assertion that "this case does not represent the most severe of offenses." On the contrary, it is difficult to imagine a more severe offense. Given that defendant was the victim's stepfather, the victim was less than two years old, and that defendant repeatedly and forcibly raped this helpless child, and then prevented the child's mother from responding to the child's cries, we conclude that the trial court's sentence was proportionate to the seriousness of defendant's conduct.

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Alton T. Davis
/s/ Deborah A. Servitto