

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

NEAL FREDERICK REDICK,

Defendant-Appellee.

UNPUBLISHED

June 28, 2007

No. 275285

Genesee Circuit Court

LC No. 91-045296-FC

Before: Whitbeck, C.J., and Wilder and Borrello, JJ.

PER CURIAM.

The prosecution appeals by leave granted an order granting defendant's motions for relief from judgment and a new trial and setting aside defendant's two convictions for first-degree criminal sexual conduct (CSC I), MCL 700.520b(1)(a) (sexual penetration with another under age 13). For the reasons set forth herein, we affirm.

On February 6, 1992, defendant was convicted of two counts of CSC I, following a jury trial. The trial court sentenced him as a second habitual offender, MCL 769.10, to 16 to 30 years' imprisonment for these convictions. This Court affirmed defendant's convictions on August 18, 1995, *People v Redick*, unpublished opinion per curiam of the Court of Appeals, issued August 18, 1995 (Docket No. 154586), and our Supreme Court denied leave to appeal on June 28, 1996, *People v Redick*, 452 Mich 861; 550 NW2d 793 (1996).

This appeal arises out of newly discovered evidence, in the form of recanted testimony, which indicated that defendant was not guilty of his CSC I convictions. At defendant's trial in 1992, Robert Crowe, who was then 11 years old, stated that in 1989, defendant, his mother's boyfriend, moved in with him and his mother. Crowe asserted that shortly after this move, defendant anally penetrated him with his penis on four separate occasions and also performed fellatio on him during one of these occasions. Crowe indicated that after these incidents, he had difficulty with bowel movements. Dr. Clyde Owings examined Crowe in 1991 and did not find any rectal abnormalities. However, Owings noted that after a brief period of time, the failure to find signs of anal penetration in children is not unusual.

In 1997, Crowe himself was convicted of having sex with a 12-year-old neighbor girl. In 2005, while Crowe was incarcerated for his own conviction, he sent defendant a letter in which

he stated that he had fabricated the allegations that defendant had sexually abused Crowe. In the letter, Crowe asserted that at the time, he wanted to live with his father, and his father told Crowe that he “would have to do something drastic in order to live with him.” Crowe then told a child at school that he had been molested. Crowe claimed that his “father put [the story] in [his] head and brainwashed [him] into believing [it.]” According to the letter, by the time Crowe reported the story to police, “it was as if [the abuse] really happened[.]” In addition to the letter to defendant, Crowe sent a second letter, dated November 2, 2005, to the Innocence Project at the Thomas M. Cooley Law School. In the second letter, Crowe explained that defendant had been convicted of molesting him when he was ten years old, but that the crime had never occurred. Crowe elaborated that after his parents’ “contentious” divorce, “[t]o get back at my mother, my father concocted this crime and brainwashed me into believing that it occurred.” Crowe asserted that “[y]ears later, it occurred to me that this was all a lie.” Crowe offered to assist the Innocence Project in securing defendant’s release from prison. Crowe also sent defendant a copy of this letter. These two letters were Crowe’s first contact with defendant in 15 years.

In April 2006, defendant filed a motion for relief from judgment, and in July 2006, he filed an amended motion for relief from judgment. Defendant claimed that the court should vacate his convictions and order a new trial on the basis of newly discovered evidence, i.e., Crowe’s recantation of his testimony against defendant. Crowe wrote a third letter to the Genesee County Prosecutor’s office on June 27, 2006. In that letter, Crowe reiterated that he had fabricated the allegations against defendant so that he could live with his father. The trial court held an evidentiary hearing and granted defendant’s motions for relief from judgment and a new trial and set aside defendant’s CSC I convictions on December 7, 2006. It is from this order that the prosecution has appealed by leave granted.¹

On appeal, the prosecution argues that the trial court abused its discretion in granting defendant’s motions. We review a trial court’s decision regarding a motion for new trial based on newly discovered evidence for an abuse of discretion. *People v Miller (After Remand)*, 211 Mich App 30, 47; 535 NW2d 518 (1995). Similarly, the decision “to grant a new trial on the basis of recanting testimony is a decision committed to trial court discretion.” *People v Canter*, 197 Mich App 550, 560; 496 NW2d 336 (1992). The abuse of discretion standard recognizes that “‘there will be more than one reasonable and principled outcome.’” *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d 809 (2006), quoting *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). Under this standard, “[a]n abuse of discretion occurs when the decision results in an outcome falling outside the principled range of outcomes.” *Woodard v Custer*, 476 Mich 545, 557; 719 NW2d 842 (2006). We review the trial court’s factual findings for clear error. *People v Cress*, 468 Mich 678, 691; 664 NW2d 174 (2003). Clear error exists when, after reviewing the record, this Court “is left with a definite and firm conviction that a mistake has been made.” *People v Swirles (After Remand)*, 218 Mich App 133, 136; 553 NW2d 357 (1996).

¹ This Court entered an order staying defendant’s new trial pending the resolution of this appeal. *People v Redick*, unpublished order of the Court of Appeals, entered February 16, 2007 (Docket No. 275285).

“For a new trial to be granted on the basis of newly discovered evidence, a defendant must show that: (1) ‘the evidence itself, not merely its materiality, was newly discovered’; (2) ‘the newly discovered evidence was not cumulative’; (3) ‘the party could not, using reasonable diligence, have discovered and produced the evidence at trial’; and (4) the new evidence makes a different result probable on retrial.” *Cress, supra* at 692, quoting *People v Johnson*, 451 Mich 115, 118 n 6; 545 NW2d 637 (1996). “[W]here newly discovered evidence takes the form of recantation testimony, it is traditionally regarded as suspect and untrustworthy.” *Canter, supra* at 559. Therefore, “Michigan courts have expressed reluctance to grant new trials on the basis of recanting testimony.” *Id.* at 560. However, this Court has recognized that a new trial is appropriately granted where the recanting witness is the sole complaining witness at trial. See, e.g., *People v Blair*, 44 Mich App 469, 472; 205 NW2d 183 (1973). Furthermore, “the discovery that testimony introduced at trial was perjured may be grounds for ordering a new trial.” *People v Barbara*, 400 Mich 352, 363; 255 NW2d 171 (1977). “In reviewing the trial court’s decision, due regard must be given to the trial court’s superior opportunity to appraise the credibility of the recanting witness and other trial witnesses.” *Canter, supra* at 560.

In granting defendant’s motion, the trial court considered and evaluated several factors. First, the trial court considered whether sufficient evidence existed to support defendant’s conviction if Crowe’s testimony were disregarded. The trial court concluded that without Crowe’s testimony, the evidence would have been insufficient to support defendant’s convictions. Our review of the record supports the trial court’s finding in this regard because Crowe was the sole complaining witness and there was no medical evidence to support Crowe’s claim that defendant sexually assaulted him.

Second, the trial court considered the credibility of Crowe’s new testimony. Because the trial judge was not the same judge who presided over defendant’s trial, the trial court conducted an evidentiary hearing. Cf. *Blair, supra* at 471-472. At the evidentiary hearing, the trial court listened to the testimony of Crowe, observed his demeanor, and ruled that the circumstantial evidence presented at trial could inferentially support his new testimony. The trial court then stated: “While that question [of the recanting witness’s credibility] is ultimately for the jury . . . [r]eversing the relevant inquiry, I do not find Mr. Crowe’s new testimony to be incredible.” Thus, the trial court essentially concluded that Crowe’s testimony at the evidentiary hearing was credible.

The trial court next considered whether Crowe had given contradictory versions of the events and whether the new testimony contained contradictions. On this third factor, the court concluded that while Crowe’s recanted version of events contained inconsistencies, Crowe’s preliminary testimony and trial testimony as well as his letters and evidentiary hearing testimony were “basically consistent.” The trial court then considered why Crowe had waited fourteen years to recant his testimony. In this regard, the trial noted that Crowe asserted that he had attempted to recant during the trial, but that his biological father forbade him to do so. Finally, the trial court considered whether Crowe received any benefit for his recantation. The trial court concluded that Crowe would not receive any benefit from his recantation and would more likely be penalized for recanting his testimony.

Our review of the record indicates that the trial court made several findings and considered its ruling in a thoughtful and legally disciplined manner. While the prosecution contends that some of the trial court’s findings contain inconsistencies, it would be improper for

this Court to substitute its view of the weight of evidence and credibility of Crowe for that of the trial court. *Cress, supra* at 695.

In rendering our ruling in this case, we are mindful and respectful of the tradition within our State's jurisprudence to view recantation testimony as suspect and untrustworthy. However, in this case, the sole complaining witness recanted his testimony, and, as we observed above, this Court has recognized the propriety of granting a new trial when the sole complaining witness recants their testimony. *Blair, supra*. Given the absence of medical evidence or eyewitness testimony, defendant was convicted based solely on Crowe's testimony. We further note that there is no evidence or suggestion that the defendant exerted any influence over Crowe's recantation of his testimony or that he even knew of Crowe's whereabouts at the time of his recantation. It is difficult to pinpoint the true motive behind Crowe's recantation, and ultimately that is, as the trial court stated, a question for the jury to discern. What we can state with certainty is that without Crowe's testimony at trial, defendant would not have been convicted of the offenses for which he has already served over fifteen years in prison. Given the trial court's findings and the dearth of evidence presented at defendant's initial trial, we conclude that the trial court's decision to grant defendant a new trial did not fall outside the principled range of outcomes and that the trial court therefore did not abuse its discretion in granting defendant a new trial. *Woodard, supra* at 557.

Affirmed.

/s/ William C. Whitbeck, C.J.

/s/ Kurtis T. Wilder

/s/ Stephen L. Borrello