

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TONY DESHAWN JOSHUA,

Defendant-Appellant.

UNPUBLISHED
December 9, 2008

No. 279700
Saginaw Circuit Court
LC No. 06-028166-FC

Before: Saad, C.J., and Fitzgerald and Beckering, JJ.

PER CURIAM.

A jury convicted defendant of two counts of third-degree criminal sexual conduct, MCL 750.520d(1)(a) (victim 13 to 15 years old), and one count of felonious assault, MCL 750.82. The trial court sentenced defendant as an habitual offender, third offense, to concurrent prison terms of 84 to 360 months for each CSC III conviction and 24 to 96 months for the felonious assault conviction. Defendant appeals as of right. We affirm.

In June 2006 the victim ran away from a facility in which she had been placed by the probate court. According to the victim, she went to defendant's home and engaged in sexual relations with defendant over the course of the next several weeks. In July 2006, defendant burned the victim with a hot iron and hot grease. The victim sought medical treatment following the grease incident, which precipitated police involvement and defendant's ultimate arrest.

At one point during defendant's audio taped statement to the police the investigating officer spoke on defendant's cell phone with the victim's cousin. The audio recording becomes distorted and inaudible during this conversation.¹ At the conclusion of the cell phone call the audio recording is once again audible.

Defendant first argues that the court violated the rule of completeness when it allowed only the audible portion of defendant's audio taped statement to be presented to the jury. The

¹ According to the testimony of the sergeant who conducted the interview, the "radio-like" feature on the phone created interference that caused a clicking sound to be recorded over the conversation.

trial court's decision regarding the admissibility of evidence is reviewed for an abuse of discretion. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003).

The doctrine of completeness, codified at MRE 106, provides:

When a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it.

This doctrine addresses the potential for misleading or confusing the issues when only a part or portion of a statement is introduced as evidence.

Here, the only portion of the audiotape not played for the jury consisted of the inaudible portion during which the sergeant conversed with another person on defendant's cell phone. Defendant has failed to explain how the omission of the inaudible portion of the audiotape mislead the jury or confused the issues, and has not established that the inaudible portion of the audiotape is an integral part of the context of his statement. We find no abuse of discretion in the trial court's decision to play for the jury only the audible portion of the audiotape. Further, defendant has failed to cite any authority in support of his argument that a duty existed on the part of the prosecution and the police to attempt to "repair" the audiotape. "It is not enough for an appellant in his brief simply to announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Mudge v Macomb Co*, 458 Mich 87, 105; 580 NW2d 845 (1998) (citation omitted).

Defendant also argues that the court improperly scored offense variable (OV) 10 (exploitation of a vulnerable victim), MCL 777.40(1)(b). The sentencing court has discretion in determining the number of points to be scored for the sentencing variables provided that there is evidence on the record that adequately supports the scoring. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). This Court reviews the scoring to determine whether the sentencing court properly exercised its discretion and whether the evidence adequately supported a particular score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003).

MCL 777.40(1)(b) provides for ten points when "the offender exploited a victim's . . . youth." Here, the prosecutor noted that

[defendant] is a person who took advantage of her agedness – her youth, rather, having had the contact first at age 12 and then resuming it at a time when she knew – he knew she was on the run from the juvenile authorities. And she was basically taking shelter in his house, although he tried to contend he was mainly living with his girlfriend, that was still his residence. And I think under the circumstances, he purely took advantage of a person who had very limited number of places to turn to for help.

The trial court agreed with the prosecutor and scored ten points for OV 10.

Defendant contends that the trial court erred in scoring ten points for OV 10 based on the victim's age alone. However, nothing in the sentencing record supports the assertion that the trial judge made his decision based solely on the victim's age. The trial court also considered the fact that defendant knew that the victim was on runaway status from a probate court placement, as well as the fact that she frequently stayed at defendant's house, to support a finding that defendant exploited the victim's youth. This evidence supports the trial court's scoring of ten points for OV 10.

Affirmed.

/s/ Henry William Saad
/s/ E. Thomas Fitzgerald
/s/ Jane M. Beckering