STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 10, 2010
v	No. 289738 Van Buren Circuit Court
MICHAEL JY-PHILO VELDHUIS, a/k/a MICHAEL JAY VELDHUIS, Defendant-Appellant.	LC No. 08-016125-FH

Before: OWENS, P.J., and O'CONNELL and TALBOT, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of two counts of third-degree criminal sexual conduct (CSC III), MCL 750.520d, and one count of accosting, enticing or soliciting of a child for immoral purposes, MCL 750.145a. Defendant was sentenced to 6-1/2 to 15 years' imprisonment for each conviction of CSC III and two to four years' imprisonment for the third conviction, which are to run concurrently. We affirm.

For a period of time in February of 2007, defendant stayed at the home of HT, a 14-year-old female, watching over her and her younger brother, JT, during their father's temporary incarceration. One evening, AA, a 14-year-old female friend of HT's, slept over at the home. At the end of the night, HT slept in the lone bedroom, JT slept in the living room, and AA slept on the floor of the den. Defendant lay down next to AA that night, pulled off her pants and forcibly engaged in two acts of sexual penetration with her. The next morning, AA's mother picked her up at HT's house and noticed AA was more quiet than usual. AA did not mention the previous night. When she arrived at her own home, AA locked herself in her room. Although she and HT were friends before the incident and AA had previously been to HT's home, AA never returned to the home after that night.

Approximately one week later at the home of HT and JT, defendant offered HT alcohol, and told her he needed to get her drunk. He grabbed HT's leg, pulled her toward him, and said he "needed pussy." At about that same time, defendant took hold of HT's hand and made her touch her own breasts. On one occasion, though the record does not indicate when, defendant

told HT that she smelled better than AA.[1] HT and JT were later interviewed about defendant's contact with HT. AA thereafter disclosed the incidents involving her. Defendant was arrested and charged with two counts of CSC III against AA, and one count of accosting, enticing or soliciting of a child for immoral purposes for his actions toward HT.

Defendant first contends that there was insufficient evidence to prove that he enticed or solicited HT for immoral purposes. On appeal for sufficiency of the evidence, this Court reviews all evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the prosecution proved all elements of the crime beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). The trier of fact, not this Court, determines what inferences may be drawn from the evidence and concludes the weight to be given to those inferences. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). We resolve all conflicts in the evidence in favor of the prosecution. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

The statute under which defendant was convicted, MCL 750.145a, provides:

> A person who accosts, entices, or solicits a child less than 16 years of age . . . to submit to an act of sexual intercourse . . . or who encourages a child less than 16 years of age . . . to engage in [sexual intercourse] is guilty of a felony[.]

Viewing all the evidence in the light most favorable to the prosecution, and resolving all conflicts in the evidence in favor of the prosecution, we find that a reasonable trier of fact could have concluded beyond a reasonable doubt that defendant encouraged HT to engage in sexual intercourse when he offered to give her alcohol, grabbed her leg and pulled her toward him, told her he needed to get her drunk, and said he "needed pussy." We further find that the jury's conclusion could have also been supported by the fact that defendant also made HT touch her own breasts and his verbal indication, in a sexual manner, that he wanted her because she smelled better than AA.

Next, defendant argues that the trial court abused its discretion when it denied his motion for a mistrial based on an improper reference to his past incarceration. We review a trial court's decision to grant or deny a mistrial for abuse of discretion. *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001). An abuse of discretion exists if the trial court's decision falls outside the principled range of outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). "A mistrial should be granted only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial." *People v Ortiz-Kehoe*, 237 Mich App 508, 513-514; 603 NW2d 802 (1999). "References to a defendant's prior incarceration are . . . generally inadmissible[,]" *People v Spencer*, 130 Mich App 527, 537; 343 NW2d 607 (1983), because of the fear that "the jury 'will misuse prior conviction evidence by focusing on the defendant's general bad character . . . .'" *People v Griffin*, 235 Mich App 27, 36; 597 NW2d 176

[1] At trial, HT testified that defendant said that he wanted to "be with her" because she smelled better than AA. However, HT also testified that while defendant did say she smelled better, he did not say he wanted her more than AA. HT additionally testified that defendant intended the comment in a sexual manner, but she later testified that he did not.

(1999), overruled on other grounds *People v Thompson*, 477 Mich 146; 730 NW2d 708 (2007), quoting *People v Allen*, 429 Mich 558, 569; 420 NW2d 499 (1988).

At trial a Michigan State Police trooper testified that he first learned of defendant's whereabouts via "a tela-type correspondence from a correctional facility in the State of Michigan." Defendant argues that this amounted to a prejudicial reference to his past incarceration. However, the record indicates that the trooper's statement actually referred to defendant's arrest for the current charges. Further, because the reference was brief and isolated, we find that it did not impair defendant's right to a fair trial. *People v Wallen*, 47 Mich App 612, 613; 209 NW2d 608 (1973). Accordingly, the trial court did not abuse its discretion when it denied defendant's motion. *Ortiz-Kehoe*, 237 Mich App at 514.

Next, defendant challenges the trial court's scoring of ten points for offense variable (OV) 4. We review a scoring decision for abuse of discretion and to see if the record adequately supports the score. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). We review the sentencing court's factual findings associated with its sentencing determination for clear error. *Babcock*, 469 Mich at 264-265. We will uphold a scoring decision if there is any evidence in the record to support it. *People v Watkins*, 209 Mich App 1, 5; 530 NW2d 111 (1995). MCL 777.34 governs OV 4, and provides that before scoring ten points, a trial court must find the victim has suffered a serious psychological injury that requires, or *may* require, professional treatment. MCL 777.34(2). The record indicates that AA was afraid after the incident and that she avoided having contact with defendant. She was scared to the point that she never returned to HT's house, she hid the incident from her family and refused to talk to investigators about it in her mother's presence. We find that this is sufficient evidence that AA suffered a serious psychological injury that may require professional treatment. *People v Apgar*, 264 Mich App 321, 329; 690 NW2d 312 (2004).

Affirmed.

/s/ Donald S. Owens
/s/ Peter D. O'Connell
/s/ Michael J. Talbot