

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHANE THOMAS BISSON,

Defendant-Appellant.

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UNPUBLISHED

November 23, 1999

No. 208784

Detroit Recorder's Court

LC No. 97-501675

Before: Gribbs, P.J., and Murphy and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right his conviction following a bench trial of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). The trial court sentenced defendant as a second habitual offender, MCL 769.10; MSA 28.1082, to 48 to 120 months in prison. We affirm.

I

Defendant first contends that the trial court improperly curtailed his recross-examination of the complainant and denied him the opportunity to place her credibility in issue. The trial court has the discretion to control the scope of cross-examination and determinations are not subject to review unless a clear abuse is shown. *People v Lucas*, 188 Mich App 554, 572; 470 NW2d 460 (1991). A clear abuse of discretion is found where an unprejudiced person, considering the facts before the trial court when it made its decision, would find that there is no reasonable justification for the trial court's ruling. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996). We find no abuse of discretion in this case.

The record establishes that, during his recross-examination of the complainant, defense counsel asked the witness several questions, received her answers, and thanked her. The trial court began to question the witness but was interrupted by defense counsel's rephrasing of the question the complainant last answered. The prosecutor began to speak to the trial court but was interrupted by the complainant's answer, prompting the prosecutor to tell the complainant that she did not have to answer any more questions because the examination was finished. When defense counsel stated that he was not done with his recross-examination, the trial court ruled that he was.

We disagree that the trial court improperly impaired defense counsel's recross-examination. First, defense counsel had thanked the witness when the judge began her own questioning and this practice is commonly used to end the examination of a witness. Second, defense counsel was asking the witness repetitive questions, which could reasonably have led the trial court to conclude that counsel had no further new questions for the witness. Third, defendant was allowed sufficient time during his cross- and recross-examination to test the witness' credibility and her ability to recall the details of the incident. Finally, the trial judge was the person in the best position to decide whether defense counsel had concluded his recross-examination; she was the person who was present at the trial and thus was able to make a decision based on the circumstances.

Furthermore, the right to cross-examine a witness is not without boundaries. The trial court has the discretion to control cross-examination in such a way as to accommodate both the defendant's right to confront the witnesses against him and to accommodate the legitimate interests of society and the trial process. See *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). The trial court was reasonable in its ruling that defendant was finished with his recross-examination because defendant was given an opportunity to confront the complainant and the trial court has the power to limit cross-examinations from repetition or merely marginally relevant material.

## II

Next, defendant argues that he was denied a fair and impartial trial as a result of the prosecutor's misconduct, specifically the prosecutor's act of telling the complainant she did not have to answer defense counsel's questions because defendant's recross-examination was complete. This Court's review of allegedly improper prosecutorial conduct is generally precluded if the defendant fails to timely and specifically object to the conduct at trial; however, this Court may review the conduct in question if an objection and instruction could not have cured the error or if a failure by this Court to review the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994); *People v Vaughn*, 186 Mich App 376, 384; 465 NW2d 365 (1990). Defendant did not specifically and timely object to any alleged prosecutorial misconduct at the trial. Furthermore, this was a bench trial and any alleged misconduct could have been brought to the court's attention and addressed by the court. Finally, failure to review this issue would not result in a miscarriage of justice because defendant has argued elsewhere that his recross-examination was wrongly curtailed. We therefore decline to engage in further review of this claim.

## III

Defendant next argues that there was insufficient evidence to convict him of third-degree criminal sexual conduct beyond a reasonable doubt. We disagree. In evaluating whether the evidence introduced against defendant supports his conviction, this Court views the evidence in the light most favorable to the prosecutor and determines whether a rational trier of fact could find that the elements of the crime charged were proven beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Furthermore, "[t]he testimony of a victim need not be corroborated in prosecutions [for third-degree criminal sexual conduct]." MCL 750.520h; MSA 28.788(8). It is well established that issues of witness credibility are left to the trier of fact to decide and a defendant can be

convicted of criminal sexual conduct based on the uncorroborated testimony of the victim. See *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999); *People v Smith*, 149 Mich App 189, 195; 385 NW2d 654 (1986).

Viewing the evidence against defendant in a light most favorable to the prosecution, and leaving questions of witness credibility to the trier of fact, a rational trier of fact could find that the elements of the crime charged were proven beyond a reasonable doubt. The elements of third-degree criminal sexual conduct are: (1) the defendant engaged in sexual penetration with another person, and (2) the defendant used force or coercion to accomplish that sexual penetration. MCL 750.520d(1)(b); MSA 28.788(4)(1)(b).

In this case, the complainant testified that defendant grabbed her by her hair and forced her head down onto his penis, which entered her mouth. Furthermore, defendant testified that in his statement to the police he said that he grabbed the complainant's head while she performed fellatio. The trial court found that the inconsistencies in the complainant's testimony were insignificant and that the complainant was a credible witness because she had repeatedly told the same story; the court, on the other hand, concluded that defendant was not a credible witness because he made two very different statements to the police and he stated in court that people lie to stay out of trouble. The trial court was justified in finding the complainant to be a credible witness and in concluding that her testimony established beyond a reasonable doubt the elements of third-degree criminal sexual conduct. Reversal on this ground is not required.

#### IV

Next, defendant contends that the trial court erred in scoring the sentencing guidelines. Defendant's argument that the sentencing guidelines were misapplied in this case is not an appropriate issue for appellate review by this Court because appellate review of claims of misinterpretation of scoring guidelines is not available and the factual predicate for the trial court's finding of terrorism, specifically the fact that the complainant's life was threatened if she told anyone of the incident, is not wholly unsupported or materially false. *People v Mitchell*, 454 Mich 145, 175-178; 560 NW2d 600 (1997). Defendant is thus not entitled to resentencing on this basis.

#### V

The sentencing guidelines' recommended minimum sentence range was 48 to 120 months for this offense. The trial court sentenced defendant within the guidelines to 48 to 120 months for the third-degree criminal sexual conduct offense. The trial judge then set that sentence aside and resentenced defendant as an habitual offender to the same 48- to 120-month term.

Defendant argues that his sentence of four to ten years in prison is disproportionate to the offense and the offender under the circumstances. We disagree. *People v Milbourn*, 435 Mich App 630; 461 NW2d 1 (1990). Furthermore, if a criminal defendant makes an argument concerning his sentence, his attorney must provide a copy of the presentence report to this Court at the time the defendant's brief is filed. MCR 7.212(C)(7) (previously found at MCR 7.212[C][6]). This Court has

held that this rule applies to a claim of disproportionality. See *People v Rodriguez*, 212 Mich App 351, 355; 538 NW2d 42 (1995). Defendant did not include a copy of his presentence report as an appendix to his brief and there is no record that this Court received defendant's presentence report separately at or near the time of the filing of defendant's brief. Therefore, defendant has failed to preserve this issue for review by this Court.

## VI

Finally, defendant argues that the cumulative effect of the many errors in his trial is so prejudicial that he was denied a fair trial. Because we have found no error requiring reversal of defendant's conviction, there can be no cumulative error. *People v Bahoda*, 448 Mich 261, 292-293, n 64; 531 NW2d 659 (1995).

Affirmed.

/s/ Roman S. Gibbs

/s/ William B. Murphy

/s/ Richard Allen Griffin