STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED March 3, 2000
v	No. 209179 Oakland Circuit Court
MICHAEL J. ERLICH, Defendant-Appellant.	LC No. 95-142892-FC

Before: Meter, P.J., and Griffin and Owens, JJ.

PER CURIAM.

Defendant appeals of right from his jury conviction of first-degree criminal sexual conduct, MCL 750.520(b)(1)(b)(i); MSA 28.788(2)(1)(b)(i).[1] Defendant was sentenced to ten to thirty years' imprisonment. We affirm.

I. Trial Court's Exclusion of Evidence

Defendant first argues that the trial court abused its discretion in denying his motion in limine to allow witnesses to testify that the victim had untruthfully told her coworkers that she had cancer, causing her coworkers to take up a collection for her and causing her employer to assign her lighter job duties. Defendant contends, for the first time on appeal, that this evidence was admissible pursuant to MRE 405(b) as proof of the victim's untruthful character. This Court reviews unpreserved claims of nonconstitutional error to determine whether forfeiture of the claim has occurred. *People v Carines*, 460 Mich 750, 763-767; 597 NW2d 130 (1999). To avoid issue forfeiture, defendant must establish "plain error" by showing that: (1) an error occurred, (2) the error was plain, and (3) the plain error affected defendant's substantial rights; i.e., that defendant was prejudiced because the error affected the outcome of the trial. *Id*. at 763. If defendant satisfies these three requirements, this Court must still exercise its discretion in deciding whether to reverse defendant's conviction. *Id*. at 763.

The trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. *People v Howard*, 226 Mich App 528, 551; 575 NW2d 16 (1997). An abuse of discretion will be found only when an unprejudiced person, considering the facts on which the trial court acted, would say

there was no justification or excuse for the ruling made. *People v Nelson*, 234 Mich App 454, 460; 594 NW2d 114 (1999). We conclude that a careful reading of the relevant rules of evidence establishes that defendant has not demonstrated plain error because the trial court did not abuse its discretion in refusing to admit the proffered extrinsic evidence.

> MRE 404(a) provides as follows, in relevant part:
> Evidence of a person's character or a trait of character is not admissible for the purpose of proving action in conformity therewith on a particular occasion, except:
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> * * *
>
> (4) Evidence of the character of a witness, as provided in Rules 607, 608, and 609.

> MRE 608, in turn, provides as follows, in relevant part:
> (a) **Opinion and Reputation Evidence of Character.** The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.
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> (b) **Specific Instances of Conduct.** *Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, . . . may not be proved by extrinsic evidence.* They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified. . . . [Emphasis supplied.]

> Finally, MRE 405 provides as follows:
> (a) **Reputation or Opinion.** In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion. On cross-examination, inquiry is allowable into reports of relevant specific instances of conduct.
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> (b) **Specific Instances of Conduct.** In cases in which character or a trait of character of a person is an essential element of a charge, claim, or defense, proof may also be made of specific instances of that person's conduct.

Defendant contends that, because the outcome of the case turned on the credibility of the victim's testimony, her character for truthfulness constituted an essential element of the defense, rendering evidence of specific instances of her conduct admissible for purposes of proving her untruthful character. Defendant is correct in his assertion that, pursuant to MRE 405(b), evidence of a specific

instance of a person's conduct may be admitted in order to prove character when character is an essential element of a defense. See *People v Harris*, 458 Mich 310, 317-318; 583 NW2d 680 (1998).

However, in the instant case, the victim's character for untruthfulness did not constitute an "essential element" of any substantive defense. As opposed to a case in which a person's character for truthfulness is an element of a crime, claim or defense — for instance, "in an action for defamation of [a] person's allegedly 'untruthful' character," *Harris*, *supra* at 318 — the evidence of the victim's character for untruthfulness was offered as circumstantial proof that her accusations against defendant were not truthful. Accordingly, MRE 405(b) is inapplicable, and defendant was limited to presenting reputation or opinion evidence to establish the victim's character for untruthfulness in order to attack her credibility. MRE 405(a); MRE 608. See *Harris*, *supra* at 317-319. Indeed, defendant was permitted to elicit from several witnesses testimony that, in their opinion, the victim was not a truthful person.

Moreover, defendant has failed to establish that the exclusion of this rather insignificant piece of evidence prejudiced him to the extent that it affected the outcome of the lower court proceedings. Accordingly, reversal is not warranted. *Carines*, *supra*.

II. Prosecutorial Misconduct

Defendant next contends that several instances of prosecutorial misconduct had the cumulative effect of denying him a fair trial; however, defendant failed to object to all but one instance of the alleged misconduct. Appellate review of this issue is thus forfeit unless defendant establishes plain error. *Carines*, *supra*. In order to determine if defendant has satisfied the "plain error" precondition for appellate review, this Court considers if a curative instruction could have remedied the prejudicial effect of the prosecutor's comments or if the failure to consider the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). When reviewing instances of alleged prosecutorial misconduct, this Court must examine the pertinent portion of the record and evaluate the prosecutor's remarks in context. *People v Avant*, 235 Mich App 499, 508; 597 NW2d 864 (1999); *People v Green*, 228 Mich App 684, 692-693; 580 NW2d 444 (1998). The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *Avant*, *supra* at 508; *Green*, *supra* at 693.

A. Alleged Improper Questioning Concerning the Credibility of Other Witnesses

Defendant maintains that the prosecutor improperly asked several witnesses to comment on the credibility of other witnesses' testimony. It is improper for a prosecutor to question a witness regarding his opinion as to the credibility of another witness, because matters of credibility are solely within the province of the jury. See *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985). However, after carefully reviewing the record, we conclude that there is no merit to defendant's contention that the prosecutor asked any witness to comment on matters of credibility. Moreover, defendant failed to object to any of the allegedly improper questions. Because the prejudicial effect, if any, of each of the prosecutor's allegedly improper questions could have been cured by a timely cautionary instruction to

the jury, our failure to review this unpreserved issue will not result in a miscarriage of justice. *Stanaway*, *supra* at 687; *Avant*, *supra* at 512.

B. Alleged Improper Questioning of Vinh Phung

Defendant next argues that the prosecutor improperly questioned Phung, a hostile prosecution witness, by forcing him to agree that his parents had lied to the police and by impeaching him based upon arrests not resulting in convictions. We disagree. Phung's testimony fully supports the inference that his parents had lied to the police, and Phung readily agreed that they had, indeed, lied. Additionally, contrary to defendant's assertion, the prosecutor did not question Phung about any arrests not resulting in convictions. Rather, the prosecutor's question regarding whether the "police have been at your home a lot" was fully justified in light of Phung's testimony that he had been convicted of two crimes involving theft and dishonesty; defendant concedes that evidence of these convictions was properly admitted pursuant to MRE 609(a). Moreover, defendant failed to object at trial on the grounds he now asserts on appeal, so appellate review of this claim is forfeit absent a showing of plain error. *Carines, supra* at 763. Defendant has not demonstrated any plain error or prejudice since any arguable prejudicial effect of the prosecutor's questions could have been cured by a timely cautionary instruction to the jury; therefore, this Court's failure to review this unpreserved issue will not result in a miscarriage of justice. *Stanaway, supra* at 687; *Avant, supra* at 512.

C. Prosecutor's Questions and Comments Concerning Defendant's Unemployment

Defendant argues that the prosecutor deliberately injected information into the trial concerning defendant's unemployment and poverty for the purpose of portraying him as a "bad man." Because no objection was made at trial to any of the allegedly improper questions or comments, appellate review of this issue is forfeit unless defendant can establish plain error. *Carines, supra* at 763.

In *People v Johnson*, 393 Mich 488, 493-497; 227 NW2d 523 (1975), our Supreme Court held that the defendant was entitled to a new trial where the prosecutor cross-examined the defendant at length regarding his employment and financial history, and then commented during closing argument that the jury "can consider when you decide whether or not this defendant committed [carrying a concealed weapon] . . . [that he is] a man with two cents in his pocket and he hasn't worked for a long time." *Id.* at 496. In contrast to the prosecutor's extensive questioning of the defendant regarding his employment history in *Johnson*, however, the prosecutor in the instant case asked a few witnesses only a handful of questions concerning whether defendant was employed at the time of the alleged crimes. Moreover, one witness testified that she could not remember whether defendant was unemployed; one witness (the victim's mother) merely testified that she paid him child support, which says nothing about defendant's employment status; and another witness testified that defendant was, indeed, employed. Accordingly, defendant has not demonstrated plain error, and he was not prejudiced in any way by the questions regarding his employment status. *Carines, supra.*

D. Allegedly Improper Questioning of Gale Erlich and Melvin Erlich

Two defense witnesses, Melvin Erlich (defendant's brother) and his wife, Gale Erlich, testified that, in their opinion, the victim was not a truthful person. The prosecutor, over defense counsel's objections, was permitted to question the Erlichs about their own daughter's rape case, which did not involve defendant. The prosecutor elicited testimony from the Erlichs that their daughter had lied to

them in the past, but that they nevertheless believed her allegations of rape. We disagree with defendant's contention that the prosecutor "harassed" and "embarrassed" the Erlichs in asking these questions. We further note that the questions were arguably relevant, in light of the Erlichs' testimony that the victim was not a truthful person. In any event, prosecutorial misconduct cannot be predicated on the prosecutor's good-faith efforts to admit evidence. *People v Missouri*, 100 Mich App 310, 328-329; 299 NW2d 346 (1999).

E. Prosecutor's Allegedly Improper References to Race and Sexual Preferences

Defendant next contends that the prosecutor improperly elicited testimony concerning defendant's extensive pornographic video collection, which contained many videos in which the couples consisted of a white man and an African-American woman. Defendant argues that, because the victim was African-American and defendant was white, the introduction of the video evidence constituted improper references to race and to defendant's sexual preference. Because defendant did not object to the prosecutor's questions at trial, this Court will only review this issue if defendant establishes plain error that was determinative of the outcome of the case. *Carines, supra* at 763. We will find prejudice only where a curative instruction could not have remedied the prejudicial effect of the prosecutor's questions or if the failure to consider the issue would result in a miscarriage of justice. *Stanaway, supra* at 687; *Avant, supra* at 512.

A prosecutor's reference to the race of a victim is improper, because race is not a proper consideration in the determination of a defendant's guilt. *People v Cooper*, 236 Mich App 643, 651; 601 NW2d 409 (1999). However, in the instant case, the prosecutor made no such reference to the victim's race; rather, it was simply obvious to any observer that the victim was African-American. The evidence concerning the "mixed-race" videotapes was not offered for the purpose of showing defendant's "sexual propensities." Rather, the evidence was relevant to defendant's motive or intent to commit the crime of criminal sexual conduct against the victim. See *People v DerMartzex*, 390 Mich 410, 412-415; 213 NW2d 97 (1973) (evidence of other acts of sexual "familiarity" between the defendant and the victim, including the victim's testimony that the defendant showed her "'movie pictures [of "sex shows"],'" was admissible "where the crime charged is a sexual offense and the other acts tend to show similar familiarity between the defendant and the person with whom he allegedly committed the charged offense").

Moreover, prosecutorial misconduct cannot be predicated on good-faith efforts to admit evidence. *Missouri, supra* at 328-329. Furthermore, the prejudicial effect of the prosecutor's questions, if any, could have been cured by a cautionary instruction that the jury was to disregard the evidence. In the absence of a specific request, the trial court's instruction to the jury at the conclusion of the case that the attorneys' statements, arguments, and questions were not evidence was sufficient to dispel any minimal prejudice. *People v Bahoda*, 448 Mich 261, 281; 531 NW2d 659 (1995). Accordingly, defendant has failed to establish plain error, and a miscarriage of justice will not result from this Court's failure to review this unpreserved issue. *Carines,* supra at 763; Stanaway, *supra* at 687; *Avant, supra* at 512.

F. Allegedly Improper Comments During Closing Argument

Defendant argues that several comments of the prosecutor during closing argument were improper. Defendant failed to object at trial to the comments he now contends were improper. This Court therefore examines the prosecutor's comments in context, *Bahoda, supra* at 283, to determine if defendant has established plain error that affected the outcome of the case. *Carines, supra* at 763.

Defendant first contends that the prosecutor's remarks that the victim "was taped" by defendant; that "defendant rarely worked"; and that defendant "spent all his time watching pornographic videos and waiting for his sex object to come home," were unsupported by the evidence. A prosecutor may not make a statement of fact to the jury which is unsupported by the evidence. *Stanaway, supra* at 686. However, a prosecutor is free to argue the evidence and all reasonable inferences therefrom as it relates to the prosecution's theory of the case. *Bahoda, supra* at 282. The victim testified that defendant sometimes photographed her in "skimpy" outfits; that he had video cameras set up in his bedroom and in the front room of the house; and that once, when she was undressing in her bedroom, she opened her closet door and discovered that she was being videotaped. She also testified that defendant "worked sometimes," but received unemployment a majority of the time, and that he was usually at home. Finally, the victim's and Robell's testimony established that defendant had a large collection of pornographic videos. Accordingly, the prosecutor's comments were supported by the evidence, and they were not improper.

Next, defendant argues that the prosecutor improperly asked the jury to consider evidence used to impeach witnesses' testimony as direct, substantive evidence of defendant's guilt. "A prosecutor may not argue the effect of testimony that was not entered into evidence at trial." *Stanaway, supra* at 686. Accordingly, it is improper for the prosecutor to refer to evidence admitted solely for impeachment purposes as substantive evidence against the defendant. *People v Jenkins*, 450 Mich 249, 260-263; 537 NW2d 828 (1995); *People v Kohler*, 113 Mich App 594, 599; 318 NW2d 481 (1982). However, in this case, the prosecutor specifically noted during her closing argument that these statements "were contrary to what these people had to say," and that that was why they had been admitted. In any event, the jury was properly and thoroughly instructed that evidence of witnesses' earlier statements which conflicted with their trial testimony was not to be considered as evidence establishing the elements of the crime. Accordingly, defendant has not demonstrated plain error, *Carines, supra* at 763, and no manifest injustice will result from this Court's failure to review this unpreserved issue. *Stanaway, supra* at 687; *Avant, supra* at 512.

Next, defendant contends that the prosecutor improperly claimed that two defense witnesses had committed perjury. "A prosecutor may argue from the facts that a witness . . . is not worthy of belief, . . . and is not required to state inferences and conclusions in the blandest possible terms." *People v Launsburry*, 217 Mich App 358, 361; 551 NW2d 460 (1996) (citations omitted). The prosecutor properly argued that two of the witnesses were not testifying truthfully at trial, in light of the evidence that they had made prior inconsistent statements. Moreover, the jury was instructed that the lawyers' statements did not constitute evidence. *Bahoda, supra* at 281. Defendant has again failed to demonstrate outcome-determinative plain error, *Carines, supra* at 763, and no miscarriage of justice

will result from this Court's failure to review this unpreserved issue. *Stanaway*, *supra* at 687; *Avant*, *supra* at 512.

Defendant next argues that the prosecutor improperly asked the jurors to put themselves in the victim's "shoes." In *Cooper*, *supra* at 653, this Court distinguished its prior decision in *People v Leverette*, 112 Mich App 142, 151; 315 NW2d 876 (1982), and concluded that, considered in context, the prosecutor's similar remarks, while poorly phrased, did not improperly appeal to the jurors' self-interest. Likewise, in the instant case, the prosecutor's exhortations that the jurors should put themselves in the victim's "shoes" were not made in the context of an argument that the jury should not decline to convict because there was only one witness, the victim, as was the case in *Leverette*. Rather, the prosecutor's comments in the instant case were made in the context of the proper argument that the victim was a credible witness because she had testified regarding extremely personal, embarrassing details of her life and because she had nothing to gain by this testimony. Therefore, "[w]hile it may have been preferable" if the prosecutor had not couched her argument in terms of the jury putting itself in the victim's "shoes," we find that "the crux of the prosecutorial argument was proper." *Cooper*, *supra* at 653. Moreover, the prejudicial effect, if any, of the prosecutor's statements could have been cured by a cautionary instruction, *id*. at 653-654, and, in fact, the jury was instructed that the lawyers' statements did not constitute evidence. *Bahoda*, *supra* at 281. Thus, we again conclude that defendant has not demonstrated outcome-determinative plain error, *Carines*, *supra* at 763, and that no miscarriage of justice will result from this Court's failure to review this unpreserved issue. *Stanaway*, *supra* at 687; *Cooper*, *supra* at 653-654; *Avant*, *supra* at 512.

Finally, defendant contends that the prosecutor improperly vouched for the victim's credibility by commenting that "[s]he came in here and she told you the truth and she told you the truth for two days." Once again, defendant did not object and thus review is not warranted absent a showing of plain error. *Carines*, *supra*. While a prosecutor may not vouch for the credibility of his witnesses to the effect that he has some special knowledge concerning a witness' truthfulness, *Bahoda*, *supra* at 276, he may argue from the facts that a witness is credible. *Howard*, *supra* at 548. The allegedly improper comment that the victim had "told the truth" was preceded by the prosecutor's remarks that the victim had told many people about defendant's crimes; that she had never changed her story; that she had to tell numerous people about the most intimate details of her life; and that she knew, by testifying against defendant, that she would lose the love of her family. When viewed in context, then, it is clear that the prosecutor was simply arguing that the victim's testimony was believable, based on the facts; such an argument was proper. *Howard*, *supra* at 548. Moreover, the prejudicial effect of the prosecutor's statements, if any, could have been remedied by a timely curative instruction to the jury, and the jury was, in fact, instructed that it was its job to assess the credibility of witnesses and that the lawyers' statements were not evidence. Accordingly, defendant has failed to establish outcome-determinative plain error, *Carines*, *supra* at 763, and a miscarriage of justice will not result from this Court's failure to review this issue. *Stanaway*, *supra* at 687; *Avant*, *supra* at 512.

III. Judicial Misconduct

Defendant argues that he was denied his right to a fair trial by several instances of misconduct by the trial court. However, because defendant did not object to the trial court's conduct at trial, this

issue is not preserved for appellate review, *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994); *People v Sardy*, 216 Mich App 111, 117-118; 549 NW2d 23 (1996), and we review unpreserved claims of constitutional error only for plain error that affected substantial rights, *Carines*, *supra* at 763-767.

Defendant argues that several comments made by the trial court indicate its bias against the defense. We disagree with this contention. We furthermore note that none of the allegedly improper comments were made in the presence of the jury and that, accordingly, it cannot be said that defendant was deprived of a fair and impartial jury trial. *People v Paquette*, 214 Mich App 336, 340-341; 543 NW2d 342 (1995). Defendant also contends that the trial court relied on personal knowledge of matters outside of the record in rendering his rulings on defendant's motion in limine to admit evidence. We find that, read in context, the complained-of comments do not indicate that the court was relying on "personal knowledge" in rendering his rulings; rather, his remarks concerning the victim's "psychological profile" were meant to caution defense counsel that the evidence he sought to admit, concerning the victim's behavior, might be perceived *by the jury* as completely consistent with the behavior one could expect from an abused individual.

Finally, defendant contends that the trial court improperly allowed the prosecutor to engage in misconduct. We have already addressed defendant's claims of prosecutorial misconduct, and have found none. Moreover, defendant has failed to establish that the alleged errors resulted in the conviction of an innocent defendant or seriously affected the fairness, integrity or public reputation of judicial proceedings. *Carines*, *supra* at 763-764. Accordingly, reversal is not warranted. *Id*.

IV. Great Weight of the Evidence

Defendant argues that the trial court erred in denying his motion for a new trial because the verdict was against the great weight of the evidence. We first note that defendant did not move for a new trial; rather, he moved for judgment notwithstanding the verdict (JNOV). In order to preserve a claim that a jury verdict is against the great weight of the evidence, the defendant must move for a new trial below. MCR 2.611(A)(1)(e); *People v Winters*, 225 Mich App 718, 729; 571 NW2d 764 (1997). Accordingly, defendant has waived the issue on appeal, and this Court need not address it. *Noble*, *supra* at 5; *Winters*, *supra* at 729. However, because defendant's motion for JNOV included the argument that "the verdict was manifestly against the clear weight of the evidence," we will briefly address this issue.

In deciding motions for a new trial, the judge is not permitted to act as a "thirteenth juror"; rather, a trial court "may grant a new trial only if the evidence preponderates heavily against the verdict so that it would be a miscarriage of justice to allow the verdict to stand." *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998); see also *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). Defendant's argument that the jury's verdict was against the great weight of the evidence is based chiefly on his contention that the victim's testimony was incredible. However, the credibility of witnesses' testimony is a matter for the trier of fact to ascertain, and will not be resolved anew on appeal. *Lemmon*, *supra* at 637; *Gadomski*, *supra* at 28.

Defendant additionally argues that, because the trial court refused to admit evidence that the victim had lied to her coworkers, and because the prosecution was permitted to introduce improper evidence, the verdict resulted in a miscarriage of justice. However, we have carefully reviewed defendant's evidentiary issues and claims of prosecutorial misconduct and have concluded that there was no error.

Defendant also contends that the trial court failed to take his motion for JNOV seriously, and failed to exercise any discretion in ruling on the motion. We disagree. It is clear from the court's comments that it had considered defendant's motion and that it had determined that defendant was not entitled to judgment notwithstanding the verdict. The court noted that it believed that the jury verdict was correct. The trial court properly declined to act as a "thirteenth juror" and to evaluate the issues raised by defendant concerning the credibility of the witnesses. *Lemmon*, *supra* at 627, 637, 640.

V. Sentence

Defendant next maintains that his sentence of ten to thirty years in prison, which was within the sentencing guidelines range of eight to twenty years, violates the principle of proportionality. A sentence constitutes an abuse of the trial court's discretion if it violates the principle of proportionality. *People v Milbourn*, 435 Mich 630, 635-636; 461 NW2d 1 (1990); *Green*, *supra* at 698. As a general rule, a sentence that falls within the guidelines' range is presumed to be neither excessive nor disparate. *People v Kennebrew*, 220 Mich App 601, 609; 560 NW2d 354 (1996). To overcome this presumption, defendant must provide evidence of unusual circumstances. *People v Hogan*, 225 Mich App 431, 437; 571 NW2d 737 (1997); *People v Cotton*, 209 Mich App 82, 85; 530 NW2d 495 (1995). Defendant does not argue that any such "unusual circumstances" exist, and, in any event, defendant's employment and lack of criminal record are not "unusual circumstances" for purposes of overcoming the presumption of proportionality. *People v Piotrowski*, 211 Mich App 527, 533; 536 NW2d 293 (1995); *People v Daniel*, 207 Mich App 47, 54; 523 NW2d 830 (1994).

Defendant's argument that the trial court failed to consider the appropriate criteria in sentencing him is meritless. As for his contention that the prosecutor failed to provide evidence that the victim had received counseling, the victim's uncontroverted testimony at trial established that, after leaving defendant's home, she stayed at two shelters and received counseling. The effect of the crime on the victim is a proper sentencing consideration. *People v Compagnari*, 233 Mich App 233, 236; 590 NW2d 302 (1998). The trial court properly considered the severity and nature of the crime, as well as the circumstances surrounding the criminal behavior. *People v Rice (On Remand)*, 235 Mich App 429, 446; 597 NW2d 843 (1999).

As the trial court noted, defendant was convicted of committing "heinous" sexual acts against the victim, who was a child and who was in the complete control of defendant at the time of the offense. Accordingly, the sentence was proportionate to the seriousness of the crime and the circumstances surrounding the offense and the offender. *Milbourn*, *supra* at 635-636; *Green*, *supra* at 698.

VI. Cumulative Error

Finally, defendant argues that he was denied a fair trial due to the cumulative effect of trial errors. The cumulative effect of a number of minor errors may in some cases amount to error requiring reversal. *Cooper*, *supra* at 659-660. However, we have found no error of any consequence. Defendant was entitled to a fair—not perfect—trial, *People v Kelly*, 231 Mich App 627, 646; 588 NW2d 480 (1998), and he received a fair trial. Accordingly, reversal is not warranted on the basis of cumulative error. *Cooper*, *supra* at 660.

Affirmed.

/s/ Patrick M. Meter
/s/ Richard Allen Griffin
/s/ Donald S. Owens

[1] Defendant was charged in separate informations with two counts of first-degree criminal sexual conduct against his ex-girlfriend's daughter, who lived with defendant from 1987 to 1995. Defendant and the victim's mother, Yvonne Butler, began dating when the victim was approximately three years old. Defendant and Butler subsequently had two children together, and they lived together as a family until approximately 1986. Butler then moved out, and the victim and the other two children continued to live with defendant. In this case, defendant was charged with one count of first-degree criminal sexual conduct (sexual penetration of a victim aged at least thirteen, but less than sixteen, while a member of the same household), MCL 750.520b(1)(b)(i); MSA 28.788(2)(1)(b)(i), which was alleged to have occurred in December 1989. In lower court case number 96-143982-FC, defendant was charged with one count of first-degree criminal sexual conduct (sexual penetration through force or coercion resulting in personal injury — to wit, pregnancy), MCL 750.520b(1)(f); MSA 28.788(2)(1)(f), which was alleged to have occurred in October 1990. The two cases were consolidated for jury trial. The jury was unable to reach a verdict in case number 96-143982-FC. However, the jury convicted defendant of first-degree criminal sexual conduct in this case.