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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH LORNE BUCK,

Defendant-Appellant.

UNPUBLISHED
November 24, 2020

No. 347658
Dickinson Circuit Court
LC No. 18-005563-FC

Before: REDFORD, P.J., and RIORDAN and TUKEL, JJ.

PER CURIAM.

Defendant appeals as of right his convictions by a jury of two counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(a) and (2)(b) (sexual penetration of a person under 13 years old by a person at least 17 years old), and one count of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(a) (sexual contact with a person under 13 years old). The trial court imposed three concurrent sentences: two terms of 30 to 50 years' imprisonment for defendant's CSC-I convictions and one term of 10 to 15 years' imprisonment for his CSC-II conviction. We affirm.

I. FACTUAL BACKGROUND

The convictions arose from defendant's repeated sexual penetration and sexual touching of his grade-school-aged daughter, AB. AB first disclosed the abuse in April 2018 to her grandmother. Evidence of physical abnormalities in her vaginal area, testimony about changes in her behavior, and testimony that defendant thoroughly cleaned AB's bedroom shortly after AB disclosed the abuse corroborated AB's trial testimony about the abuse. Defendant testified at trial and denied the allegations.

II. JURY INSTRUCTIONS

Defendant contends that the trial court erred by failing to adequately admonish the jurors to refrain from discussing the case among themselves before the start of deliberations. This issue is unpreserved. We review unpreserved issues for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Under the plain-error doctrine, reversal is

warranted only if a "clear or obvious" error occurred that "affected the outcome of the lower court proceedings." *Id*. And even if this standard is satisfied,

> an appellate court must exercise its discretion in deciding whether to reverse. Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence. [*Id*. at 763-764 (citation, quotation marks, and brackets omitted).]

"Even if jury instructions are imperfect, they do not create error if they fairly present the material issues to be tried and sufficiently protect the defendant's rights." *People v Tate*, 244 Mich App 553, 568; 624 NW2d 524 (2001).

During jury voir dire, an initial short recess took place, and the court, before this recess, stated, "[Y]ou must not discuss this case with anyone at this point or let anyone discuss it in your presence." The court gave this instruction again before a second recess during voir dire. Immediately after a jury was picked, the court stated that the jurors would have a third short recess, after which the attorneys would give opening statements and the court would give preliminary jury instructions. The court directed, "You are not permitted to discuss the case with anyone or let anyone discuss it with you or in your presence. This includes any family members and/or friends." Nineteen minutes later, the jurors returned to the courtroom and the court gave the preliminary jury instructions. The court stated:

> As jurors, you must not discuss the case with anyone, including your family or friends. *You must not even discuss it with other jurors until the time comes for you to decide the case*. When it is time for you to decide the case, I will send you to the jury room for that specific purpose. Then you should discuss the case amongst yourselves, but only in the jury room and only when all the jurors are present. When the trial is over, you may, if you wish, discuss the case with anyone.
>
> If I call for a recess during the trial, I will either send you back to the jury room or allow you to leave the courtroom and go about your own business, but you must not discuss the case with anyone or let anyone discuss it with you or in your presence. [Emphasis added.]

The court instructed, "Until your jury service is concluded, *you are not to discuss the case with others, including other jurors*, except as authorized by the [c]ourt." (Emphasis added.) Opening statements and initial testimony then took place. At the conclusion of the first day of trial, the court stated, "[Y]ou are not permitted to discuss this case with anyone or let anyone discuss it with you or in your presence."

Before three breaks on the second day of trial, at the conclusion of testimony on the second day of trial, and before the first break on the third day of trial, the court again told the jurors that they could not discuss the case with anyone or let anyone discuss it in their presence. Before the second break on the third day of trial, the trial court told the jurors, "[Y]ou must not discuss this case with anyone *or even amongst yourselves*." (Emphasis added.) Before a third break on the third day of trial and at the conclusion of testimony on the third day of trial, the court stated, "[Y]ou

must not discuss the case with anyone or let anyone discuss it in your presence." Deliberations began the following morning.

M Crim JI 2.12 states:

> You must not discuss the case with anyone, including your family or friends. You must not even discuss it with the other jurors until the time comes for you to decide the case. When it is time for you to decide the case, I will send you to the jury room for that purpose. Then you should discuss the case among yourselves, but only in the jury room and only when all the jurors are there. When the trial is over, you may, if you wish, discuss the case with anyone.

The use notes for these instructions state:

> The no-discussion instruction *must be given* to the jury, but it may be given when most appropriate. In any case that appears likely to be of significant public interest, an admonition should be given before the end of the first day if the jury is not sequestered. At the end of each subsequent day of the trial, and at other recess periods if the court deems it necessary, an admonition should be given. [M Crim JI 2.12, use notes.][1]

Defendant contends that a plain error occurred because the court only twice instructed the jurors not to discuss the case among themselves,[2] and they were not given the do-not-discuss-the-case-among-yourselves instruction before their initial recess as a picked jury or before two recesses that occurred in the midst of voir dire.

Defendant cites *People v White*, 144 Mich App 698; 376 NW2d 184 (1985). In *White*, this Court noted that in Michigan, "it is reversible error to instruct jurors that they can discuss the case as testimony is coming in but that they are to refrain from arriving at a verdict until after all the evidence is in and the jury is instructed on the law." *Id*. at 700; see also *People v Hunter*, 370 Mich 262, 269-273; 121 NW2d 442 (1963). The trial court clearly did not permit such in the present case.

In *White*, "after the jury selection, and prior to opening statements of counsel, the trial judge gave preliminary instructions to the jury, which included a clear instruction on their responsibility not to discuss the case with one another or other persons until it was properly submitted to them." *White*, 144 Mich App at 700. The defendant claimed that the jurors must have improperly begun deliberations before the appropriate time because they submitted questions to the judge before closing arguments and final jury instructions. *Id*. at 700-701. The *White* Court stated:

> No inference can be drawn from this record that the jury actually had begun its deliberations or had had any conversations regarding the facts of the case. There

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[1] Defendant makes no argument about this case being "of significant public interest."

[2] This is not accurate; as set forth above, three such instructions were given.

> is nothing to suggest that the jury was doing anything except following the court's instruction [to submit questions in writing to the judge]. In the absence of evidence indicating that conversations actually occurred or that defendant was otherwise prejudiced, there is no error. [*Id*. at 701.]

Here, as in *White*, no inference may be drawn from anything in the record that the jury began deliberations at an improper time or discussed the case among themselves before instructed to do so by the trial court. Further, after the jury selection and before opening statements of counsel, the trial court gave preliminary instructions to the jury, which included a clear instruction on their responsibility not to discuss the case with one another or other persons until it was properly submitted to them. That the full text of M Crim JI 2.12 was not given during short breaks before preliminary jury instructions and was not given during every subsequent admonishment does not demonstrate a clear or obvious error that was outcome-determinative. *Carines*, 460 Mich at 763. In *People v Haugabook*, 23 Mich App 356, 358-359; 178 NW2d 556 (1970), the Court stated, "While prudence would dictate that the trial judge should remind the jury not to discuss the case, failure to do so does not require reversal absent a showing of prejudice." The record in this case establishes that the jurors were, in fact, given the proper admonishment before opening statements and the start of testimony and throughout the course of the proceedings were instructed not to discuss the case until permitted by the trial court. Defendant has failed to establish plain error and reversal is not warranted.

III. PROSECUTORIAL MISCONDUCT

Defendant contends that the prosecution committed three instances of misconduct.[3] The prosecution stated the following during opening statement:

> [AB is] a very young girl, and she's going to describe acts and details that no eight-year-old should know. And her testimony will be credible when you hear the details and when you see her demeanor. And her testimony will be corroborated by those medical witnesses and by the others, her family members and her teachers.

During closing argument, the prosecution stated:

> And, again, we know based on testimony, that [AB] told no one her secret until she told her grandmother, and that occurred on April 7th of 2018.
>
> . . . [Defendant] just testified, and I think that that's fresh enough in your memories. I think that you can decide whether you believe that his testimony is credible.
>
> Ask yourselves: Who had the motivation to lie here? Whose testimony did you believe? And whose testimony is the most consistent with the evidence?

[3] There were two prosecutors who represented the People in this case. For ease of reference, we simply use the phrase "the prosecution."

In rebuttal closing argument, the prosecution stated:

> Again, I would urge you to consider all of the evidence together as a whole. The [d]efense can try as it may to pick each piece apart individually, but together? Together it proves beyond a reasonable doubt that the defendant is guilty as charged. The disclosure, in combination with the changes in behavior, in combination with the injuries, in combination with the defendant's behavior after he learns of his daughter's allegations, in combination with . . . testimony that [AB's] behaviors were consistent with other child sexual assault victims, in combination with the child's testimony yesterday.
>
> You heard and saw that child's testimony. That cannot be coached. *That child's testimony was credible*. There's no doubt about how difficult this process has been for her, and there's no doubt about the fact that having to testify here in front of 13 strangers was a painful experience. From Day 1—from Day 1—she has told everyone that she did not want to get her father in trouble. From Day 1 she has told everyone that she didn't want her parents to break up again.
>
> So ask yourselves when you're thinking about [AB's] credibility, what did she have to gain by making false accusations? Nothing. She lost her father. Not only was she victimized sexually over and over and over, she lost her father. There is no reason to disbelieve her testimony. [Emphasis added.]

Defendant takes issue with the italicized portions of the above excerpts.

Defendant did not object to the first two comments. Therefore, we review these claims of error under the plain-error standard. *Carines*, 460 Mich at 763-764. Defendant also did not raise a contemporaneous objection to the last comment, see *People v Bennett*, 290 Mich App 465, 475; 802 NW2d 627 (2010), but defendant's appellate challenge to it is preserved insofar as he argued for a mistrial on the basis of the comment, see *People v Alter*, 255 Mich App 194, 205; 659 NW2d 667 (2003). "The denial of a motion for a mistrial is reviewed for an abuse of discretion." *Id.* (citation omitted). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Unger (On Remand)*, 278 Mich App 210, 217; 749 NW2d 272 (2008) (citation omitted). A mistrial is warranted only if an irregularity occurred that was prejudicial to the defendant and impaired his ability to obtain a fair trial. *Id.*

This Court considers issues of prosecutorial error "on a case-by-case basis by examining the record and evaluating the remarks in context, and in light of [the] defendant's arguments." *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004). "[A] prosecutor may not vouch for the credibility of his witnesses by implying that he has some special knowledge of their truthfulness." *Id.* at 455. "But a prosecutor may comment on his own witnesses' credibility during closing argument, especially when there is conflicting evidence and the question of the defendant's guilt depends on which witnesses the jury believes." *Id.*; see also *People v McGhee*, 268 Mich App 600, 633; 709 NW2d 595 (2005) ("A prosecutor may argue that a prosecution witness is credible.") A prosecutor must refrain from "plac[ing] the prestige of her position or her own

integrity behind the testimony" and instead must support statements of credibility with facts or testimony. See *id*; see also *People v Dobek*, 274 Mich App 58, 66; 732 NW2d 546 (2007).

The prosecution's statement during opening statement that AB's testimony would be credible was clearly based on the proposed facts and did not allude to any special knowledge or any prestige of the prosecution's office. The prosecution said that AB's testimony would be credible "when you hear the details and when you see her demeanor," and she immediately spoke of ways in which AB's testimony would be corroborated by evidence. No clear or obvious error is apparent respecting this statement. *Carines*, 460 Mich at 763. The statement from closing argument that defendant challenges on appeal clearly was not an affirmative statement regarding the witnesses' credibility. The prosecution merely asked the jurors to consider the testimony and ask themselves who had the motivation to lie. The question posed to the jury asked them to decide for themselves which witness to believe. Defendant has failed to establish plain error. *Id.* M Crim JI 2.6(3)(f) specifically instructs the jury to do that which the prosecutor asked the jury to do.

When the statement during rebuttal closing argument is viewed in context, *Thomas*, 260 Mich App at 454, the record reveals that the prosecution made the comment about credibility in relation to the facts of the case and did not suggest special knowledge about AB's truthfulness. *Id.* at 455. Further, defense counsel had argued that AB's testimony was not worthy of belief, and the prosecution, in rebuttal, merely responded to this argument. *Id.* at 454. The prosecution's remarks requested that the jurors recall AB's testimony, think about her lack of a motive to lie, view AB's testimony in connection with corroborating evidence, and reach the conclusion that AB testified credibly. Accordingly, the trial court did not abuse its discretion by denying defendant's motion for a mistrial based on the statement made during rebuttal argument. *Unger*, 278 Mich App at 217.

IV. GREAT WEIGHT OF THE EVIDENCE

Defendant argues that the verdict was against the great weight of the evidence. Defendant did not request a new trial on this ground. Therefore, defendant failed to preserve this issue for appeal and we review it under the plain error standard. *People v Cameron*, 291 Mich App 599, 617-620; 806 NW2d 371 (2011). In *People v Lacalamita*, 286 Mich App 467, 469-470; 780 NW2d 311 (2009) (quotation marks and citations omitted) this Court explained:

> The test to determine whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. Generally, a verdict may be vacated only when the evidence does not reasonably support it and it was more likely the result of causes outside the record, such as passion, prejudice, sympathy, or some other extraneous influence. Conflicting testimony, even when impeached to some extent, is an insufficient ground for granting a new trial. Further, the resolution of credibility questions is within the exclusive province of the jury.

The two CSC-I charges were based on penetration of AB's "genital opening or anal opening . . . by . . . defendant's penis, finger, or tongue." It is not disputed that AB was under 13 years old at the time of the alleged penetrations and that defendant was over 17 years old. See

MCL 750.520b(1)(a) and (2)(b). The one CSC-II charge was based on defendant's touching of AB's "genital area, groin, inner thigh, buttock, or breast or the clothing covering that area." Again, it is not disputed that AB was under 13 years old at the time of the alleged touching. See MCL 750.520c(1)(a).

Sexual contact "includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, [or] done for a sexual purpose[.]" MCL 750.520a(q). Sexual penetration "means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required." MCL 750.520a(r).

AB testified that defendant "got on [her], and had sex." She testified that defendant "sometimes put his—he used his pinky, his middle finger, and his thumb to put it up my private, like—my vagina, and then he used his private part to go, like—butt and my vagina [sic]." She stated that defendant put part of his hands "up [her] butt hole" and that this happened "[a]bsolutely more than one time." AB testified that defendant also touched her "butt hole" with his "private part" and it caused a pain "like birds picking . . . with their beaks." AB said that defendant also touched her vagina with his "private," that he referred to his semen as "candy," and that he sometimes forced AB to eat it.

AB also testified that sometimes defendant would "put his tongue on" her vagina, and he would not stop when she asked him. Further, AB testified that defendant threatened that he would " ' tie [her] up' " if she did not stop moving. AB testified that she feared that he would kill her. AB explained that the abuse occurred at the family home and also in a trailer where defendant moved when he and AB's mother were separated. AB said that defendant touched her with his fingers "[m]ore than one or two times" and put his mouth on her vagina "[m]ore than one and two times [sic]." She testified that the abuse occurred while her mother worked outside of the home or shopped.[4]

Defendant contends that nothing corroborated AB's testimony. The record, however, does not support defendant's contention. A sexual-assault nurse examiner saw unusual redness in AB's hymenal area and observed other areas of redness. She testified that the redness she observed in AB's vaginal area would not be caused by a urinary-tract infection. Significantly, the nurse testified, "The way [AB] described what happened to her and the . . . apparent injuries that I saw, have a strong correlation." AB's mother and grandmother also testified about extreme redness in AB's vaginal area. AB also experienced pain and an observable, unusual discharge in that area. AB's grandmother testified that when AB disclosed the abuse to her, AB acted "deathly afraid"

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[4] MCL 750.520h states that "[t]he testimony of a victim need not be corroborated in prosecutions under sections 520b to 520g." While defendant denied the abuse, "the resolution of credibility questions is within the exclusive province of the jury." *Lacalamita*, 286 Mich App at 470. Defendant's briefing is unclear regarding whether he is raising a sufficiency-of-the-evidence issue, but AB's testimony alone is enough to reject any sufficiency argument being advanced.

and cried. AB's mother, AB's grandmother, and one of AB's teachers testified about pertinent observable changes in AB's behavior. Also, the prosecution elicited testimony that defendant thoroughly cleaned AB's bedroom after the accusations were made, even though the rest of the house was a "pigsty." The record reflects that substantive evidence corroborated the victim's testimony. Therefore, the verdict was not against the great weight of the evidence even under "normal" standards and was certainly not "clear[ly]" or "obvious[ly]" against the great weight of the evidence. See *Cameron*, 291 Mich App at 619.

Defendant seeks to rely upon this Court's recent opinion in *People v Del Cid (On Remand)*, ___ Mich App ___; ___ NW2d ___ (2020) (Docket No. 342402). He argues that it supports his great-weight argument. In *Del Cid*, a physician diagnosed the victim with " 'possible pediatric sexual abuse' " on the basis of history provided, even though she had made no physical findings in support of the conclusion. *Id*. at ___; slip op at 3-4. This Court concluded that such testimony amounted to an error requiring reversal. *Id*. at ___; slip op at 10-11. This Court stated that "a diagnosis of possible pediatric sexual abuse is . . . inadmissible without corroborating physical findings." *Id*. at ___; slip op at 10.

Defendant contends that some of AB's therapist's testimony violated the rule articulated in *Del Cid*. *Del Cid*, however, is inapposite to this case because the therapist did not "diagnose" AB with possible pediatric sexual abuse. Even if the therapist testified similarly in some ways to the testimony at issue in *Del Cid*, reversal would still not be warranted. Indeed, defendant's argument fails because the record reflects that defendant's convictions were supported by the great weight of the evidence without the therapist's testimony. This case is not analogous to the situation in *Del Cid*, wherein the victim's testimony lacked corroboration by other evidence. *Id*. at ___; slip op at 11. In this case, the prosecution presented substantial evidence from which reasonable jurors could find defendant guilty beyond a reasonable doubt. The supplemental authority submitted by defendant provides no basis for reversal.

V. SENTENCING

Defendant contends that the sentencing guidelines Offense Variables (OV) 9 and 13 were misscored. Defendant failed to preserve these claimed errors. Therefore, we review them under the plain-error standard. *Carines*, 460 Mich at 763-764.

The trial court assessed defendant 10 points for OV 9. Under MCL 777.39(1)(c) 10 points must be assessed for OV 9 if "[t]here were 2 to 9 victims who were placed in danger of physical injury[.]" "[E]ach person who was placed in danger of physical injury" is to be counted as a victim. MCL 777.39(2)(a).

In *People v Sargent*, 481 Mich 346, 350; 750 NW2d 161 (2008), the Supreme Court stated, "[W]hen scoring OV 9, only people placed in danger of injury or loss of life when the sentencing offense was committed (or, at the most, during the same criminal transaction) should be considered." As an example, the *Sargent* Court referred to a robbery during which "other individuals present at the scene of the robbery . . . were placed in danger of injury or loss of life." *Id*. at 350 n 2. The Court concluded that an additional sexual assault allegedly committed by the defendant was not the sentencing offense and "did not arise out of the same transaction as the

abuse of the complainant" and that OV 9 should, therefore, have been scored at zero points. *Id*. at 351.

However, in *People v Waclawski (After Remand)*, 286 Mich App 634, 684; 780 NW2d 321 (2009), this Court upheld the assessment of 10 points for OV 9 by concluding that it was a reasonable inference from the testimony "that . . . other boys were sleeping [at the defendant's home] while [the] defendant was [sexually] assaulting his chosen victim." The Court stated, "[T]he record supports the inference that at least two other victims were placed in danger of physical injury when the sentencing offenses were committed." *Id*.

AB testified that sometimes her younger brother was present and watched while defendant abused her. Moreover, and significantly, the presentence investigation report states the following: "The offenders [sic] six year old son had also disclosed sexual abuse by the offender to his therapist. Due to his dsiabilities [sic] and inabiliity [sic] to testify in court, those offenses were not charged." This abuse of the younger brother was also discussed at a pretrial motion hearing. In *People v McChester (On Remand)*, 310 Mich App 354, 358; 873 NW2d 646 (2015), this Court stated, "When calculating the sentencing guidelines, a court may consider all record evidence, including the contents of a [presentence investigation report], plea admissions, and testimony presented at a preliminary examination." There was direct evidence of AB's younger brother being present when defendant sexually abused AB, thus victimizing the brother as well. Therefore, defendant has failed to establish that the trial court committed plain error by assessing defendant 10 points for OV 9.

Defendant contends that a score of zero for OV 9 was appropriate because of *People v Phelps*, 288 Mich App 123; 791 NW2d 732 (2010), overruled in part on other grounds by *People v Hardy*, 494 Mich 430, 438 n 18; 835 NW2d 340 (2013), superseded in part by statute as stated in *People v Rodriguez*, 327 Mich App 573, 579 n 3; 935 NW2d 51 (2019). In *Phelps*, this Court stated that a 10-point score for OV 9 was unwarranted even though two other teenagers were in the same room as the defendant and a sexual-assault victim when the assault took place. *Phelps*, 288 Mich App at 125, 139. This Court stated that "nothing in the record suggested that [the other two people] were ever placed in danger of physical injury[.]" *Id*. at 139. The present case is distinguishable and analogous to *Waclawski* in light of the very young age—and thus susceptibility to injury of—the brother and in light of the evidence that defendant committed his acts against the victim in the presence of AB's brother, thus also victimizing AB's brother.

Defendant also claims that the trial court misscored OV 13 by assessing defendant 50 points for OV 13. Under MCL 777.43(1)(a), a trial court must assess 50 points for OV 13 if "[t]he offense was part of a pattern of felonious criminal activity involving 3 or more sexual penetrations against a person or persons less than 13 years of age[.]" "[A]ll crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction." MCL 777.43(2)(a). Except in circumstances not relevant here, conduct scored for OV 11 or 12 is not to be scored for OV 13. MCL 777.43(2)(c).[5]

[5] Defendant was not assessed points for OV 11 or 12.

Defendant contends that because the jury convicted him of only two counts of CSC-I, an insufficient number of penetrations occurred to support assessment of 50 points for OV 13. MCL 777.43(2)(a), however, explicitly indicates that a conviction is not necessary for a crime to be "counted" under this variable. In this case, AB testified that defendant penetrated her vagina and anus with his fingers and his penis "[a]bsolutely more than one time" during a two-year period. AB's testimony sufficed to support the scoring of 50 points for OV 13. Defendant, therefore, has failed to establish plain error in this regard.

Defendant also contends that the trial court imposed a disproportionate and unreasonable sentence and that the court did not give adequate, substantial, and compelling reasons for departure from the mandatory 25-year minimum sentence in MCL 750.520b(2)(b). We disagree with this argument.

A sentence departing from the guidelines range[6] is reviewed by this Court for reasonableness. *People v Lockridge*, 498 Mich 358, 392; 870 NW2d 502 (2015). "[T]he proper inquiry when reviewing a sentence for reasonableness is whether the trial court abused its discretion by violating the principle of proportionality set forth in *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990), which requires sentences imposed by the trial court to be proportionate to the seriousness of the circumstances surrounding the offense and the offender." *People v Steanhouse*, 500 Mich 453, 459-460; 902 NW2d 327 (2017) (quotation marks and citation omitted).

Defendant bases his contention in part on his claim that the trial court misscored OV 9 and OV 13. The trial court, however, properly scored OV 9 and OV 13. Defendant also contends that the trial court failed to articulate substantial and compelling reasons for departing from the mandatory 25-year minimum sentence in MCL 750.520b(2)(b). In *People v Carlson*, ___ Mich App ___, ___; ___ NW2d ___ (2020) (Docket No. 344674); slip op at 6, lv app pending, this Court explained that:

> the prior requirement for "objective and verifiable" reasons for departing from the guidelines was tied to the requirement for "substantial and compelling" reasons for departure, see *People v Anderson*, 298 Mich App 178, 183; 825 NW2d 678 (2012), and courts are no longer required to articulate "substantial and compelling" reasons to impose a sentence above the advisory guidelines range, [*People v*] *Walden*, 319 Mich App [344,] 351[; 901 NW2d 142 (2017)].

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[6] The applicable guidelines range for defendant's minimum sentence equaled 135 to 225 months (11.25 to 18.75 years). However, because defendant was over 17 years old and he sexually penetrated a person under 13 years old, he was subject to the mandatory 25-year minimum sentence specified under MCL 750.520b(2)(b). Twenty-five years essentially became the "de facto" guidelines number of years. See, generally, *People v Wilcox*, 486 Mich 60, 70, 72; 781 NW2d 784 (2010). Defendant received a minimum sentence of 30 years in prison for CSC-I, an upward departure from the mandatory minimum.

The 25-year statutory mandatory minimum has served as the de facto guidelines minimum, and the trial court was not required to articulate substantial and compelling reasons for departure from this mandatory minimum. Defendant's argument that the trial court had to state "substantial and compelling" reasons is unavailing in light of *Lockridge*, 498 Mich at 391, where our Supreme Court struck "down the requirement of a 'substantial and compelling reason' to depart from the guidelines range[.]" As stated in *Walden*, 319 Mich App at 351, a "sentence must only be reasonable."

In this case, the trial court gave several reasons for exceeding the 25-year mandatory minimum sentence by five years. The trial court noted that a father-daughter relationship should be "built upon trust and unconditional love" but that defendant instead chose to "manipulate[] [AB] for [his] own selfish and sick desires." The trial court noted that the statute in question encompassed any child under the age of 13 but that AB had been significantly younger than that at the time of the commission of the offenses. The trial court observed, based upon evidence in the record that AB had observable physical trauma and that any trauma had been "amplified" because the perpetrator was AB's own father. Evidence established that defendant forced AB to consume his semen and threatened to tie her up if she did not comply with his various demands during the commission of the sexual assaults. AB experienced emotional injury and behavioral changes as a result of the offenses defendant perpetrated on her.

The trial court appropriately concluded that the guidelines scoring and the statutory minimum sentence was "woefully insufficient to account for the depth of the physical and psychological injuries that were inflicted upon [AB]." The record reflects that the trial court adequately explained the reasons for its imposition of a sentence more proportionate to the offender and the offense than the mandatory statutory minimum. The trial court's sentencing decision was comprehensive and well-articulated. In light of the egregious circumstances of this case, the trial court did not violate the principle of proportionality, and therefore, did not abuse its discretion by imposing a sentence that departed upward from the mandatory statutory minimum. *Steanhouse*, 500 Mich at 459-460.

Affirmed.

/s/ James Robert Redford
/s/ Michael J. Riordan
/s/ Jonathan Tukel