

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
March 19, 2013

v

HENRETTA TERRIS LITTLE,

Defendant-Appellant.

No. 308962
Saginaw Circuit Court
LC No. 10-033939-FC

Before: BORRELLO, P.J., and M. J. KELLY and BOONSTRA, JJ.

PER CURIAM.

Defendant Henretta Terris Little appeals by right her jury convictions of torture, MCL 750.85, assault with intent to do great bodily harm less than murder, MCL 750.84, and kidnapping, MCL 750.349. The trial court sentenced Little to serve 2 to 10 years in prison for her assault with intent to do great bodily harm less than murder conviction and to serve 225 to 500 months in prison for both the torture and kidnapping convictions. Because we conclude that there were no errors warranting relief, we affirm.

I. BASIC FACTS

The victim lived with Little and Little's cousin and co-defendant, Laprinces Jones, from late 2009 until January 2010. He testified that, during this time, he was not allowed to leave the house and that Little injured his legs and feet by striking him with a hammer on multiple occasions. She also forced him to sleep in a chest-like bench that was locked shut at the end of her bed and she locked him in a closet.

Little also deprived the victim of food and water and hit him with her hands, a brush, and an extension cord. Little scratched his face and burned him too. The victim said that Jones would hold him down while Little abused him, but that Jones burned him once and hit him with the hammer once. The victim was able to escape the house and walk to a nearby hospital in January 2010.

Dr. Anjanette Kemp treated the victim and noted that he had scratches on his face with some bruising, as well as marks on his chest that were consistent with burns. Kemp also saw multiple linear scars on the victim's chest, back, and upper arms, which the victim said were from being whipped. Kemp indicated that the linear injuries were in various stages of healing, but did not opine as to their cause. Kemp also noted that he had injuries to his feet that were

consistent with damage from a hammer and were partially healed. According to Kemp, the victim also appeared dehydrated and very thin. She testified that he had internal bleeding in the brain, which was consistent with head trauma.

Jones testified at trial and verified much of the victim's version of events. Jones stated that she was originally charged with torture, kidnapping, and assault with intent to do great bodily harm, but took a plea deal. As part of the deal, she agreed to testify against Little and the prosecutor agreed to dismiss the torture and kidnapping charges. She pleaded guilty to assault with intent to do great bodily harm and unlawful imprisonment and was sentenced to serve a minimum of seven years in prison.

Little's trial lawyer attempted to question Jones about the possible sentences associated with torture and kidnapping, but the prosecutor objected. The trial court sustained the objection and noted that the judge, not the jury, was responsible for sentencing and, because Little was charged with the same crimes, the jury should not be exposed to the potential sentences.

Little's lawyer also requested an instruction on Jones' plea deal, which included the potential penalties. The trial court denied the potential penalty portion of the request and clarified again that it was the judge's job to sentence, not the jury's. The trial court said that the jury should not have sympathy or prejudice in making their decision because of the possible penalties. The trial court then instructed the jury with the standard witness instruction and an accomplice instruction. The jury found Little guilty of torture, kidnapping, and assault with intent to do great bodily harm.

This appeal followed.

II. RIGHT TO CONFRONTATION

A. STANDARD OF REVIEW

Little first argues that the trial court denied her constitutional rights to confrontation and due process when it refused to allow her lawyer to question Jones about the full extent of the leniency that she got by taking the plea deal. We review *de novo* whether a trial court violated a defendant's right to confront the witnesses against them. *People v Benton*, 294 Mich App 191, 195; 817 NW2d 599 (2011).

B. ANALYSIS

A defendant has a constitutional right to confront the witnesses against him. *People v Dendel (On Second Remand)*, 289 Mich App 445, 453; 797 NW2d 645 (2010). The right to confront witnesses is generally satisfied when the witness appears in court, testifies under oath, and is subject to cross-examination. *People v Rose*, 289 Mich App 499, 513; 808 NW2d 301 (2010). Nevertheless, a witness's motivation for testifying is relevant to credibility and the ability to test witness credibility is an important part of the right to confront witnesses. *People v McIntire*, 232 Mich App 71, 102; 591 NW2d 231 (1998), *rev'd on other grounds* 461 Mich 147 (1999). Accordingly, a defendant has the right to have a witnesses' plea deal disclosed to the jury. *Id.* But, the trial court may impose reasonable limitations on that right to avoid

“harassment, prejudice, confusion of the issues, or interrogation that is repetitive or only marginally relevant.” *Id.*

Here, Jones testified that she was originally charged with torture, kidnapping, and assault with intent to do great bodily harm less than murder. She told the jury that she pleaded guilty to assault with intent to do great bodily harm less than murder and unlawful imprisonment and was sentenced to a minimum of seven years in prison. Jones also said she agreed to testify against Little in exchange for dismissal of the torture and kidnapping felonies.

Little’s lawyer was able to cross-examine Jones on all the other details of her plea, including her minimum sentence and what other charges had been dropped. Her lawyer was still able to argue during closing argument that Jones was saving herself a lot of prison time by accepting the plea deal. Furthermore, Little’s lawyer cross-examined Jones about inconsistencies in her testimony.

On this record, we cannot conclude that the trial court denied Little the right to confront Jones by limiting her cross-examination. Her lawyer had a reasonable opportunity to challenge Jones’ credibility on the basis of her plea deal and inconsistent statements. The trial court was also legitimately concerned that the jury should not learn about the penalties for torture and kidnapping to avoid the possibility that the jury’s verdict might be motivated by sympathy or prejudice. *People v Torres*, 222 Mich App 411, 423; 564 NW2d 149 (1997) (stating that it is the rule in Michigan that neither the court nor counsel should address the question of the defendant’s disposition after the verdict); *McIntire*, 232 Mich App at 102.

III. INSTRUCTIONAL ERROR

A. STANDARD OF REVIEW

Little next argues that the trial court erred when it refused to instruct the jury on the potential penalties associated with Jones’ dismissed charges. We review claims of instructional error de novo. *People v Hartuniewicz*, 294 Mich App 237, 242; 816 NW2d 442 (2011). However, we review a trial court’s decision concerning whether a particular instruction is applicable to the facts for an abuse of discretion. *Id.*

B. ANALYSIS

The trial court must instruct the jury on the applicable law and the instructions must include “all elements of the charged offenses and any material issues, defenses, and theories if supported by the evidence.” *People v McGhee*, 268 Mich App 600, 606; 709 NW2d 595 (2005). However, imperfect instructions are not grounds for reversal if the instructions given “fairly presented the issues to be tried and adequately protected the defendant’s rights.” *People v Kowalski*, 489 Mich 488, 501-502; 803 NW2d 200 (2011).

As already discussed, the jury had considerable information about Jones’ credibility, including her possible motive to lie in order to get a plea deal. Moreover, the trial court’s decision to limit the scope of the examination was reasonable in light of the fact that Little was charged with the same offenses. *McIntire*, 232 Mich App at 102. The trial court properly sought to limit the potential that the jury’s decision might be swayed—for or against Little—on the

basis of its knowledge about the potential penalty. See *Torres*, 222 Mich App at 423. Furthermore, the trial court instructed the jury generally on witness credibility indicating that it should consider “any bias, prejudice, or personal interest in how this case is decided” and whether there were “promises, threats, suggestions, or other influences that affected how the witness testified.” The trial court also specifically instructed the jury on accomplices. When considered as a whole, these instructions adequately protected Little’s rights. *Kowalski*, 489 Mich at 501-502.

IV. SENTENCING

A. STANDARDS OF REVIEW

Finally, Little argues that the trial court erred in scoring Offense Variables (OV) 7 and 8. The sentencing guidelines are a comprehensive, integrated, and mandatory sentencing scheme; trial courts must score them and must score them properly. *People v Bemer*, 286 Mich App 26, 32, 34-35; 777 NW2d 464 (2009). This Court reviews de novo whether the trial court properly interpreted and applied the sentencing guidelines to the facts. *People v Cannon*, 481 Mich 152, 156; 749 NW2d 257 (2008). And this Court reviews the trial court's findings underlying a particular score for clear error. *People v Osantowski*, 481 Mich 103, 111; 748 NW2d 799 (2008). This Court must affirm the defendant’s sentence absent an error in scoring. MCL 769.34(10); *People v Babcock*, 469 Mich 247, 261; 666 NW2d 231 (2003).

When scoring the offense variables, only the sentencing offense is to be considered. *People v Gray*, 297 Mich App 22, 30; 824 NW2d 213 (2012). In this case, Little’s sentencing offense was her torture conviction. Accordingly, the trial court had to score her variables on the basis of that offense.

B. OV 7

On appeal, Little argues that the trial court could not properly score OV 7 at 50 points for conduct that was necessarily a part of the underlying offense; and, because the underlying offense was torture, the trial court could not score OV 7 on the basis of the acts that she committed that constituted torture. Whether the Legislature intended OV 7 to be scored even for torture convictions is a matter of legislative intent. With OV 7—which is titled “aggravated physical abuse”—the Legislature required trial courts to score 50 points if “[a] victim was treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense.” MCL 777.37(1)(a). The Legislature did not, however, specifically state that OV 7 should not be scored if the underlying offense was torture. Cf. MCL 777.38(2)(b) (instructing the trial court not to score the variable for asportation or captivity if the underlying offense is kidnapping); MCL 777.31(2)(e) (instructing the trial court to not score 5 points under OV 1 if the underlying offense was a violation of MCL 750.82 or MCL 750.529). Nevertheless, this Court has stated that, “circumstances inherently present in the crime must be discounted for purposes of scoring an OV.” *People v Glenn*, 295 Mich App 529, 535; 814 NW2d 686 (2012).

Assuming—without deciding—that *Glenn* stands for the proposition that OV 7 cannot be scored for any conduct that is “inherent” to the underlying offense, we nevertheless conclude that the trial court did not err when it scored OV 7 at 50 points. The trial court found that OV 7 should be scored at 50 points because Little’s conduct fell under each of the four categories: it amounted to sadism, torture, excessive brutality, and was designed to substantially increase the victim’s fear and anxiety. MCL 777.37(1)(a). The term “excessive” within the phrase “excessive brutality” refers to some baseline activity. When interpreted in light of the statement in *Glenn*, it must be understood as involving brutality that exceeds that which was necessary to commit the underlying offense. Thus, even though the crime here involved torture, if Little committed the offense using brutality that was excessive even for that offense, the trial court properly scored OV 7 at 50.

Considering the amount and extent of the victim’s injuries, the abuse was excessive, even in light of the torture conviction. Additionally, Jones testified that defendant recorded the victim being abused and that defendant would beat the victim if the victim did something defendant did not like. Recording the humiliation that the victim was forced to endure was also “[cruel] beyond the ‘usual’ brutality of a crime.” *Glenn*, 295 Mich App at 533. Given the facts revealed at trial, we cannot conclude that the trial court clearly erred when it found that Little used excessive brutality.¹

C. OV 8

Little next argues that the trial court erred when it scored OV 8 because the Legislature provided that OV 8 should not be scored if the underlying offense was kidnapping and she was convicted of kidnapping. Although a trial court cannot score OV 8 at 15 points if the sentencing offense was kidnapping, see MCL 777.38(2)(b), the sentencing offense in this case was torture, not kidnapping, and the record clearly supported the trial court’s finding. Therefore, the trial court did not err when it scored OV 8 at 15.

There were no errors warranting relief.

Affirmed.

/s/ Stephen L. Borrello

/s/ Michael J. Kelly

/s/ Mark T. Boonstra

¹ Because the trial court properly scored this variable on the basis of the excessive brutality alone, we decline to address whether the trial court could properly score this variable under the alternative bases.