

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KENNETH E. GREATHOUSE,

Defendant-Appellant.

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UNPUBLISHED

June 25, 1996

No. 172493

LC No. 93-006108

Before: Michael J. Kelly, P.J., and Young and N.O. Holowka,\* JJ.

PER CURIAM.

Defendant was convicted of two counts of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2). He was sentenced to life imprisonment on one count, and twenty-five to fifty years on the other. He appeals as of right. We affirm in part and remand.

The victim and other prosecution witnesses described a violent rape. Defendant struck a woman from behind as she was leaving a motel. He dragged her through a field and to a vacant house. He vaginally raped her outdoors. When she tried to escape, he “body slammed” her to the ground, and then stomped her ribs, face and stomach. He grabbed her by the throat and dragged her into the vacant house. While inside, he again vaginally raped her. He was threatening her with anal intercourse when the police (alerted by neighbors) arrived. The police found the victim partially naked and crying about a rape; the defendant was found with his pants around his ankles, and he tried to flee.

The victim was hospitalized with a broken nose, cracked ribs, black eyes, cuts, and bruises. There was some dispute about whether some of her hair was also ripped out.

The defendant painted a different picture. He testified that the victim was a drunk prostitute who agreed to have sex with him for \$20 after her boyfriend beat her. Defendant said he went to the area of Eight Mile and Woodward after the bars closed in Wyandotte so that he could go to a restaurant. When his companions left the restaurant later that morning, defendant remained behind because he wanted to “be with” a woman and wanted a “date.” The defendant testified that he

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\* Circuit judge, sitting on the Court of Appeals by assignment.

encountered the victim crying and carrying two bags of clothing as she departed an area motel. When he approached her to help, he testified, she offered to have sex with him so she could get enough money to find a new place to stay.

This testimony led to some cross examination about defendant's "dating" habits, including whether he was so desperate for women that he had previously picked up prostitutes in that area. He testified that he had, and described their hangouts (certain motels). The prosecutor used this to show that the place where defendant said the victim selected (an abandoned house some distance away from their "meeting" point) was not the place prostitutes generally used.

On cross examination, the prosecutor tested several aspects of the defendant's version of events, including asking several questions relating to the \$20:

A. She told me if I gave her \$20, she would have sex with me, I agreed -

Q. (Interposing) Okay.

A. - and eventually I did give her \$20.

Q. Okay. What did - what do you do for a living, sir?

A. Me, myself. I'm unemployed.

Q. When were you last employed?

A. When I was living -

*Mr. Royal [defense counsel]:* (Interposing) Objection, can we approach the bench?

*The Court:* Please rephrase the question.

*By Ms. Morrow [prosecutor]:* When asked by the police, you told them you had no previous employment, correct, sir?

A. Not at that time, I did not.

\* \* \*

Q. When did you last work, sir?

*Mr. Royal:* Objection. Can we approach the bench?

*The Court:* No. I'll allow it.

\* \* \*

Q. - you told me you lived in a hotel, but you didn't tell me how you paid for it.

\* \* \*

A. When I moved here, I was living in hotels night by nights and by me supporting myself, eating, sleeping, clothing, things like that, I had to turn tricks.

Q. You were a prostitute weren't you, sir?

A. Yes, I was.

Q. And you were a prostitute for other men, weren't you?

A. Yes, I was.

Q. And the area of Seven Mile, between Seven and Eight on Woodward is, in fact, where you turned your tricks, isn't it?

A. In that area.

Q. Yes. And that's why you're familiar with that area isn't it, sir?

A. And the bars, yes.

Q. Yes. You don't know that [the victim] is a prostitute, do you, sir?

A. She approached me as one.

As the cross examination developed, it turned out that the defendant's entire story about how he had been in the area to go to a restaurant with friends was false; he had actually been in the area to engage in acts of prostitution with his male companion, and that is how he earned the money he said he paid the victim.

## I.

Defendant first argues that the prosecutor improperly asked questions about (A) defendant's "employment status" and (B) the credibility of prosecution witnesses.

### **A. Defendant's employment status as a male prostitute**

While poverty cannot be used to show motive to commit a crime or to question a witness's credibility, *People v Johnson*, 393 Mich 488, 496; 227 NW2d 523 (1975), here the prosecutor was entitled to rebut defendant's story about how he just happened to be in the area when he was approached by a "prostitute." During his direct examination, defendant gave an entirely innocent explanation of his presence and his contact with the victim, and certainly opened the door to cross

examination about those circumstances. In the process, it was necessary that certain details come out - like his familiarity with prostitutes' habits and how this incident did not have the earmarks of sex for hire. When it was ultimately revealed that the defendant was a male prostitute, it was a natural result of his direct examination testimony about how he was simply in the area to visit a restaurant.

The prosecutor was entitled to rebut defendant's theory of the case and follow through on issues raised during direct examination. *People v Conte*, 152 Mich App 8, 14; 391 NW2d 763 (1986); *People v Kincade*, 61 Mich App 498, 507; 233 NW2d 54 (1975).

### **B. Credibility of prosecution witnesses**

The prosecutor asked the defendant whether he had seen all the witnesses testify in the case, and whether he was the only person so entitled (due to the sequestration order). After an objection, the prosecutor asked whether defendant knew of any reason that the man who called the police, the victim, and the police officers would want to lie about defendant.

It is inappropriate to ask a defendant to give his opinion of the opposing witnesses' credibility. *People v Buckley*, 424 Mich 1; 378 NW2d 432 (1985). Here, the question did not concentrate on the entire issue of credibility, but rather on whether defendant knew of any motive the witnesses would have to lie. "Opportunity and motive to fabricate testimony are permissible areas of inquiry of any witness." *Id.* at 15. We find no error.

## II.

Defendant argues that the court failed to adequately articulate reasons for departing from the guidelines. The guidelines were scored at ten to twenty-five years. Defendant was sentenced to life imprisonment.

It appears the court believed that a "life" sentence was less harsh than twenty-five years, based on eligibility for parole. That position was rejected in *People v Crawford*, 161 Mich App 77, 82; 409 NW2d 729 (1987), remanded on other grounds, 437 Mich 856 (1990).<sup>1</sup> Accordingly, believing the sentence was within the guidelines, the trial court failed to note the departure on the Sentencing Information Report, failed to acknowledge a departure in its comments at sentencing, and failed to prepare a departure form.

The prosecutor concedes that the court failed to articulate reasons for departing from the guidelines. We therefore remand for articulation of reasons for the departure. *People v Triplett*, 432 Mich 568, 573; 442 NW2d 622 (1989).

Defendant also argues that his sentences are disproportionate under *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). His sentence on the second count (twenty-five to fifty years) is within the guidelines range and is presumed proportionate. Defendant argues that the court erred by simultaneously scoring Prior Record Variable 7 for a concurrent felony conviction and Offense Variable

12 for other criminal penetrations. We disagree. A single act may offend multiple variables for scoring purposes. *People v Maben*, 208 Mich App 652; 520 NW2d 850 (1995); *People v Vonins (After Remand)*, 203 Mich App 173, 176; 511 NW2d 706 (1993). Having cited no unusual circumstances to render his guidelines sentence disproportionate, *Milbourn*, 435 Mich at 661, we affirm the sentence on Count II.

Nonetheless, because we are remanding for a statement of reasons for departing from the guidelines on Count I, we decline to address defendant's *Milbourn* challenge to that sentence.

Affirmed and remanded for articulation of reasons for departure. We retain jurisdiction.

/s/ Michael J. Kelly

/s/ Robert P. Young, Jr.

/s/ Nick O. Holowka

<sup>1</sup> The *Crawford* interpretation was endorsed in *People v Lino (After Remand)*, 213 Mich App 89, 96-98; \_\_\_ NW2d \_\_\_ (1995). We are bound by AO 1994-4 to follow that rule.