

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK MCCREADY,

Defendant-Appellant

UNPUBLISHED

January 27, 1998

No. 191627

Kalamazoo Circuit Court

LC No. 95-000538-FC

Before: Neff, P.J., and Sawyer and Murphy, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and one count of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). Defendant was subsequently convicted of being a third habitual offender, MCL 769.11; MSA 28.1083. Defendant was sentenced to concurrent prison terms of twenty to forty years on the first-degree criminal sexual conduct convictions and ninety to one-hundred-eighty months for the second-degree criminal sexual conduct conviction. He appeals as of right and we affirm.

Defendant first argues that the trial court abused its discretion in allowing Detective Michael Szekely to testify regarding his observations of defendant's behavior during an interview. This Court reviews a trial court's decision to admit evidence for an abuse of discretion. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). Detective Szekely testified that when asked direct questions during the interview, defendant would move his eyes and look down, and that he brought defendant's eyes back toward his to convey to defendant that he did not believe him. We find no abuse of discretion is allowing this testimony because it explained Detective Szekely's actions and assisted the jurors in determining whether Szekely's conduct during the interview was coercive and intimidating which, according to defendant, was the reason that he partially confessed to the incidents.

Defendant next argues that the trial court abused its discretion by denying his motion for a mistrial based on testimony by the victim's mother that defendant's wife had a venereal disease. We disagree. This Court reviews a trial court's grant or denial of a mistrial for abuse of discretion. *People*

v Cunningham, 215 Mich App 652, 654; 546 NW2d 715 (1996). When asked whether the police instructed her to arrange a physical examination of the victim, the victim's mother testified that she arranged an appointment on her own initiative. The prosecutor then questioned her why she wanted the victim examined, to which she replied that she wanted to ensure that the victim was fine, and that defendant's wife had a venereal disease.

Although arguably prejudicial, the statement did not warrant the granting of a mistrial because the circumstances surrounding the statement reduced its prejudicial effect. First, the jurors were immediately informed by the trial court that the statement was irrelevant, and that it was struck from the record. Later, the jurors were further instructed not to consider evidence that was excluded or testimony that was stricken, and that their decision should rest solely on the admitted evidence. Jurors are presumed to have followed a court's instructions until the contrary is clearly shown. Finally, no testimony was presented regarding the source of the venereal disease nor was it suggested that the victim contracted any disease. Accordingly, the trial court's failure to grant a mistrial, under these circumstances, is not an abuse of discretion. *People v Pearson*, 13 Mich App 371, 382; 164 NW2d 568 (1968).

Finally, defendant contends that his sentence was based on inaccurate information because he was improperly given a score of fifty for Criminal Sexual Conduct Offense Variable 12. However, this Court's review of habitual offender sentences using the sentencing guidelines in any fashion is inappropriate, and review is limited to determining whether the sentence violates the principle of proportionality, without consideration of the guidelines. *People v Gatewood*, 450 Mich 1025; 546 NW2d 252 (1996). In light of the circumstances of this case and the criminal history of defendant, we do not find that the sentence violates the principle of proportionality. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990).

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy

I concur in result only.

/s/ Janet T. Neff