

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARRELL PABLO FREY,

Defendant-Appellant.

UNPUBLISHED

July 28, 2009

No. 284647

Wayne Circuit Court

LC No. 07-013821-FC

Before: Talbot, P.J., and Fitzgerald and Hoekstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree criminal sexual conduct (CSC I) for engaging in sexual penetration with a person under the age of thirteen, MCL 750.520b(1)(a). Defendant was sentenced to 25 to 50 years' imprisonment. He appeals as of right. We affirm.

I. Summary of the Facts

The victim, defendant's nephew, testified that on December 16, 2006, when he was 7 years old, defendant came into the bathroom while he was taking a shower. After the victim got out of the shower, defendant put his "[t]hing" in the victim's buttocks. After the victim complained to his mother that evening that defendant had put "his nasty thing in his butt," the victim's parents took him to the hospital. At the hospital, a nurse completed a rape kit. She included the victim's underwear in the kit. Semen was found on the underwear, and a swatch of the underwear containing the semen was sent for DNA testing. Natalie Morgan, the prosecutor's expert witness, testified that DNA found on the underwear swatch matched the DNA of defendant.

II. Motion to Adjourn

Defendant claims that the trial court, by denying his motion to adjourn, violated his rights to due process and the effective assistance of counsel and interfered with counsel's ability to prepare an effective defense. We review a trial court's decision to grant or deny an adjournment for an abuse of discretion. *People v Snider*, 239 Mich App 393, 421; 608 NW2d 502 (2000). A trial court abuses its discretion when it chooses an outcome that falls outside the range of reasonable and principled outcomes. *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

A party must show good cause to invoke a trial court's discretion to grant an adjournment. MCR 2.503(B)(1); *People v Jackson*, 467 Mich 272, 276; 650 NW2d 665 (2002). In determining whether a defendant has shown good cause, a court should consider whether defendant "(1) asserted a constitutional right, (2) had a legitimate reason for asserting the right, (3) had been negligent, and (4) had requested previous adjournments." *People v Coy*, 258 Mich App 1, 18; 669 NW2d 831 (2003)(quotation omitted). A trial court's decision to deny a motion to adjourn is not grounds for reversal unless the defendant demonstrates prejudice. *Snider, supra* at 421.

Defendant moved for an adjournment on the first day of trial because the prosecutor, contrary to the trial court's order, had not yet provided him the information or data underlying Morgan's conclusion that DNA found on the victim's underwear matched the DNA of defendant. Although the prosecutor was ordered to provide the underlying information or data to defendant by February 27, 2008,¹ defendant admitted that he had not brought the prosecutor's failure to comply with the order to the trial court's attention until the first day of trial. Because defendant did not request an adjournment until the first day of trial, the trial court's decision to deny the motion to adjourn fell within the range of reasonable and principled outcomes. *Unger, supra*. The trial court did not abuse its discretion in denying defendant's motion to adjourn.

Even if the trial court abused its discretion in denying the motion, defendant has not established that he was prejudiced by the trial court's decision. *Snider, supra* at 421. Defendant has not explained how his cross-examination of Morgan would have differed had he been granted an adjournment, nor has he provided the proposed testimony of any expert witness.

III. Consumption of the DNA Evidence

Defendant claims that he was denied his constitutional rights to due process, to a fair trial, and to present a defense when the underwear swatch and two anal swabs, on which semen was found, were "destroyed"² before he could conduct independent testing on the swatch and swabs. We review constitutional issues de novo. *People v Schumacher*, 276 Mich App 165, 176; 740 NW2d 534 (2007).

Under principles of due process, "[a] criminal defendant has a right to present a defense." *People v Anstey*, 476 Mich 436, 460; 719 NW2d 579 (2006). "Due process requires the prosecution to disclose evidence in its possession that is exculpatory and material, regardless of whether the defendant requests the disclosure." *Schumacher, supra* at 176, citing *Brady v Maryland*, 373 US 83, 87; 83 S Ct 1194; 10 L Ed 2d 215 (1963); see also *California v Trombetta*, 467 US 479,485; 104 S Ct 2528; 81 L Ed 2d 413 (1984). To meet the constitutional standard of materiality, the "evidence both must possess an exculpatory value that was apparent before the evidence was destroyed, and be of such a nature that the defendant would be unable to

¹ At trial, defendant stated that the prosecutor had been ordered to provide the information by February 25, 2008.

² Morgan testified that the underwear swatch and the anal swabs were "consumed" during the process of developing DNA profiles.

obtain comparable evidence by other reasonably available means.” *Trombetta, supra* at 489. If the evidence does not meet the constitutional standard of materiality, which is the case when the evidence is “potentially useful,” a defendant’s due process rights are only violated if the defendant can establish that the police acted in bad faith regarding the destruction of the evidence. *Arizona v Youngblood*, 488 US 51, 57-58; 109 S Ct 333; 102 L Ed 2d 281 (1988). Defendant does not assert that the DNA evidence on the underwear swatch and the anal swabs meets the constitutional standard of materiality. Rather, he argues that the failure of the police to preserve the DNA evidence constituted bad faith.

“The presence or absence of bad faith by the police for purposes of the Due Process Clause must necessarily turn on the police’s knowledge of the exculpatory value of the evidence at the time it was lost or destroyed.” *Id.* at 56 n *. To establish bad faith, “a defendant must prove ‘official animus’ or a ‘conscious effort to suppress exculpatory evidence.’” *United States v Jobson*, 102 F3d 214, 218 (CA 6, 1996), quoting *Trombetta, supra* at 488. Here, defendant has presented no evidence that the police knew that the underwear swatch or the anal swabs had any exculpatory value. Nothing in the record suggests that the police knew that the semen on the underwear swatch or on the anal swabs could form a basis for exonerating defendant. Defendant also has presented no evidence suggesting that the police acted with any animus or with an effort to suppress exculpatory evidence. Accordingly, defendant has failed to show that the consumption of the DNA evidence violated his constitutional rights.

IV. Discovery

Defendant next argues that the prosecutor’s failure to provide him with the “underlying data” supporting Morgan’s conclusions denied him the opportunity to prepare for trial and to employ an independent expert.

At a motion hearing on February 20, 2008, approximately a week and a half before trial, defendant informed the trial court that he had received some “scientific information, “some kind of conclusion,” that defendant was connected to the biological substance on the victim’s underwear. Defendant asked the trial court to order the prosecutor to provide all of Morgan’s notes underlying the “conclusion” and to appoint a DNA expert witness. The trial court “appointed” an expert and ordered the prosecutor to provide defendant with the notes by February 27, 2008. Defendant did not receive the requested information until the second day of trial. But, as he conceded at trial, defendant received the information the same day it was received by the prosecutor. On appeal, defendant does not claim that the prosecutor refused to comply with the trial court’s order to turn over the information; rather, he contends he was prejudiced by the prosecutor’s “actions in delaying compliance.”

There is no general constitutional right to discovery in a criminal case. *People v Elston*, 462 Mich 751, 765; 614 NW2d 595 (2000). A nonconstitutional error is presumed harmless, and to obtain a reversal of his convictions, a defendant must persuade the reviewing court that it is more probable than not that the error was outcome determinative. *Id.* at 766. An error is outcome determinative if it undermined the reliability of the verdict. *Id.*³ Here, defendant has

³ A defendant’s due process right to discovery is implicated in three situations: (1) the
(continued...)

only conclusory claimed that the prosecutor's delayed compliance with the trial court's order prejudiced his ability to prepare for trial and to employ an independent expert. Defendant has provided no evidence to suggest that, had the prosecutor provided the information to him by February 27, 2008, he would have been able to impeach Morgan's conclusion that defendant's DNA matched DNA found on the victim's underwear. Defendant has not articulated any questions that he would have asked Morgan on cross-examination, nor has he presented the proposed testimony of any expert witness. Accordingly, defendant has failed to show that the prosecutor's delayed compliance with the trial court's order was outcome determinative.

V. Right of Confrontation

Defendant claims that because he did not have the opportunity to cross-examine the forensic analyst who performed the DNA tests that were used against him, he was denied his constitutional right of confrontation. "In order to preserve the issue of the improper admission of evidence for appeal, a party generally must object at the time of admission." *People v Knox*, 469 Mich 502, 508; 674 NW2d 366 (2004); see also MRE 103(a) (requiring a timely objection). Defendant did not object during the testimony of Morgan on the basis that because she had not performed the DNA testing, he was denied his right of confrontation. Accordingly, the issue whether defendant was denied his right of confrontation is unpreserved. We review unpreserved claims of error for plain error affecting the defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Plain error is error that is obvious or clear. *Id.*

"[I]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." US Const, Am VI; *Crawford v Washington*, 541 US 36, 42; 124 S Ct 1354; 158 L Ed 2d 177 (2004). In *Crawford, supra* at 59, the United States Supreme Court held that a testimonial statement of a witness absent from trial is only admissible if the witness is unavailable and the defendant had a prior opportunity to cross-examine the witness. *People v Bryant*, 483 Mich 132; ___ NW2d ___ (2009). The Supreme Court declined to provide a comprehensive list of what constitutes testimonial statements, *Crawford, supra* at 68, but recognized that it includes "pretrial statements that declarants would reasonably expect to be used prosecutorially" and "statements that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial," *id.* at 51-52 (quotations omitted); see also *People v Lonsby*, 268 Mich App 375, 391; 707 NW2d 610 (2005) (opinion by Saad, J.). Recently, in *Melendez-Diaz v Massachusetts*, 557 US ___; 129 S Ct 2527, 2531-2532; ___ L Ed 2d ___ (2009), the Supreme Court held that "certificates of analysis" which showed the results of forensic testing were testimonial

(...continued)

prosecutor allows false testimony to stand uncorrected; (2) the defendant served a timely discovery request on the prosecution and the prosecution suppressed material evidence favorable to the defendant; and (3) the defendant made no request or only a general request for exculpatory evidence and the prosecutor suppressed exculpatory evidence. *People v Tracey*, 221 Mich App 321, 324; 561 NW2d 133 (1997). When a discovery violation implicates a defendant's due process rights, the error is of constitutional magnitude. See *Elston, supra* at 766 n 6. However, defendant makes no argument that the prosecutor's delayed compliance with the trial court's order implicated his due process right to discovery.

statements,⁴ and that absent a showing that the forensic scientist was unavailable to testify trial and the defendant had a prior opportunity for cross-examination, the defendant was entitled to be confronted with the analysts at trial.

In *Lonsby*, Judge Saad concluded that a laboratory report and corresponding notes prepared by an out-of-court scientist was testimonial hearsay within the meaning of *Crawford*. *Lonsby, supra* at 392-393.⁵ The testimony of an in-court scientist was offered for the purpose of introducing the conclusions contained in the report. According to Judge Saad, because the testifying scientist had no firsthand knowledge of the analysis performed or of conclusions of the out-of-court scientist, the defendant was not able to challenge the objectivity of the out-of-court scientist or the accuracy of her observations and methodology. *Id.* at 392.

Morgan testified that defendant's DNA matched the DNA found on the victim's underwear. However, another forensic analyst, who did not testify at defendant's trial, performed the actual DNA testing. Nonetheless, Morgan testified that she "was present with -- while she [the nontestifying forensic analyst] was analyzing -- while she took the evidence." Morgan also testified that she reviewed and analyzed the data taken by the nontestifying forensic analyst, and that she and the nontestifying forensic analyst reached the conclusion that the DNA found on the victim's underwear matched the DNA of defendant. Accordingly, it appears that Morgan had firsthand knowledge of the methods used by the nontestifying forensic analyst and that Morgan testified to her own conclusions, rather than conclusions reached solely by the nontestifying analyst. Thus, unlike the defendant in *Lonsby, supra*, defendant was able to challenge the accuracy of the methodology used and the ultimate conclusion reached by Morgan and the nontestifying forensic analysis. Under these circumstances, defendant has not shown plain error. He has not established that he was clearly and obviously denied his right of confrontation. *Carines, supra* at 763.

VI. Expert Testimony

Defendant claims that the trial court erred when it allowed Dr. Mark Sadzikowski to testify that in more than 50 percent of sexual assaults, there are no physical findings of an assault. According to defendant, Sadzikowski's testimony was improperly admitted because it was irrelevant and highly prejudicial and because it was based on hearsay. We review an unpreserved claim of error for plain error affecting a defendant's substantial rights. *Carines, supra* at 763. Error affects a defendant's substantial rights if it affected the outcome of the proceedings. *Id.*

Sadzikowski testified that, based on his own clinical experience and page 284 of "American or Pediatric Medicine, American College of Emergency Physicians," "greater than 50

⁴ According to the Supreme Court, the "certificates of analysis" were "quite plainly affidavits." The certificates contained the results of the forensic testing, were sworn to before a notary public, and, pursuant to Massachusetts law, were for the sole purpose of providing prima facie evidence of the composition, quality, and weight of the analyzed substance.

⁵ The other two judges on the *Lonsby* panel concurred only in the result.

percent of sexual assaults do not have any physical findings.” Even assuming that the admission of Sadzikowski’s testimony constituted plain error, defendant has not shown that the error affected his substantial rights. The victim testified that defendant’s “[t]hing” “went in [his] butt.” In addition, semen was found on the victim’s underwear, and DNA from the victim’s underwear matched the DNA of defendant. Based on this evidence, we conclude that the admission of Sadzikowski’s testimony, even if plain error, did not affect the outcome of the proceedings. *Carines, supra* at 763.

VII. Prosecutorial Misconduct

Defendant argues that he was denied a fair trial when the prosecutor elicited sympathy for the victim, shifted the burden of proof, used defendant’s prior convictions to portray him as a bad person, and argued facts not in evidence. We review claims of prosecutorial misconduct de novo. *People v Abraham*, 256 Mich App 265, 272; 662 NW2d 836 (2003). Claims of prosecutorial misconduct are reviewed on a case-by-case basis, and we must evaluate the prosecutor’s comments in context to determine whether the defendant was denied a fair and impartial trial. *Id.* at 272-273; *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

A

Defendant argues that the prosecutor improperly appealed to the jury’s sympathy when she (1) told the victim that what happened was not his fault, (2) asked the victim what was making him afraid, and (3) asked in closing arguments “who would want to relive the horror of what [the victim] went through.” A prosecutor may not appeal to the jury to sympathize with the victim. *Watson, supra* at 591.

After the prosecutor asked the victim what happened when he stepped out of the shower, the victim leaned back in the witness chair, covered his eyes, and appeared to start crying. The prosecutor then asked the victim if he knew “that what happened [was] not [his] fault.” Taken in context, the prosecutor’s comment was not an appeal for the jury to sympathize with the victim, but rather was an attempt to calm the victim. Regardless, the trial court sustained defendant’s objection to the comment, and instructed the jury to disregard the comment. Jurors are presumed to follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

Subsequently, the prosecutor asked the victim to demonstrate how he was standing over the toilet. The victim refused to comply with the request, explaining that he was “[t]oo scared.” The prosecutor asked the victim “[w]hat [he] was afraid of” and “what [was] making [him] afraid to show [the jury] how [his] body was on the toilet.” Again, taken in context, the comments were not an appeal for the jury to sympathize with the victim, but rather were legitimate follow-up questions to the victim’s statement that he was “[t]oo scared” to demonstrate how he was standing at the toilet.

During closing arguments, the prosecutor reminded the jury that the victim refused to demonstrate how he was standing at the toilet. The prosecutor said she did not know why the victim refused, and then asked the jury, “Who wants to relive the horror of what he went through?” The prosecutor’s comment was not an appeal for the jury to sympathize with the victim, but an explanation for why the victim refused to demonstrate how he was standing at the

toilet. The comment was proper. See *Schumacher, supra* at 178-179 (a prosecutor is free to argue all reasonable inferences arising from the evidence); *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997) (a prosecutor may argue from the facts that a witness is credible).

B

Defendant claims that in closing arguments the prosecutor improperly used his prior convictions to argue that he was a bad man. Defendant testified that in April 2005 he was convicted of unlawfully driving away an automobile, false pretenses between \$1,000 and \$20,000, and receiving or concealing stolen property. In closing arguments, the prosecutor argued that, based on defendant's three prior convictions, "there is no reason in the world why you [the jury] should believe" defendant's testimony that he did not sexually abuse the victim.

Defendant concedes that evidence of his prior convictions was admissible under MRE 609 to impeach his credibility. Contrary to defendant's assertion, the prosecutor did not use the prior convictions to argue that defendant was a bad man; rather, the prosecutor used defendant's prior convictions to argue that defendant was not credible. The prosecutor's comment was proper.

C

Defendant also claims that the prosecutor improperly shifted the burden of proof when she argued that defendant "had no explanation for how his DNA ended upon on his nephew's underwear." "[A] prosecutor may not comment on a defendant's failure to testify or present evidence, i.e., the prosecutor may not attempt to shift the burden of proof." *Abraham, supra* at 273.⁶ Even if the prosecutor's comment was improper, it does not warrant reversal. The trial court instructed the jury that defendant was "presumed to be innocent," that "[t]he prosecutor must prove each element of the crime beyond a reasonable doubt" and "defendant is not required to prove his innocence," and that it must acquit defendant if it finds that "the prosecutor has not proven every element beyond a reasonable doubt." These instructions were sufficient to cure any prejudice to defendant.

D

Defendant argues that the prosecutor argued facts not in evidence when she stated that defendant must have penetrated the victim's anus because a man, who is "sexually interested in children" and has "a child bent over naked," would not just stop at "touching the outside of the child's buttocks with [his] penis." A prosecutor may not make a statement of fact to the jury that

⁶ In its brief on appeal, plaintiff states that the prosecutor's comment was not accurate of defendant's testimony, because defendant presented "an explanation, albeit a silly one," as to how defendant's semen came to be on the victim's underwear. Defendant testified that on occasion he would have sexual intercourse with girlfriends on his bed, that the victim often walked around the house in his underwear, and that the victim would play on his bed. Defendant does not argue that the prosecutor's comment was improper because it inaccurately represented defendant's testimony.

is unsupported by the evidence, but is free to argue the evidence and all reasonable inferences arising from it as they relate to the prosecutor's theory of the case. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). The prosecutor's comment that defendant had no reason to just touch the victim with his penis was a reasonable inference from the evidence presented. The comment was proper.

VIII. Cruel or Unusual Punishment

Defendant claims that his minimum sentence of 25 years' imprisonment violates the constitutional prohibition against cruel or unusual punishment. We review de novo the constitutionality of a statute. *People v Piper*, 223 Mich App 642, 645; 567 NW2d 483 (1997). A statute is presumed to be constitutional, *People v Swint*, 225 Mich App 353, 364; 572 NW2d 666 (1997), and the party challenging the statute has the burden to prove its invalidity, *People v Thomas*, 201 Mich App 111, 117; 505 NW2d 873 (1993).

MCL 750.520b(2)(b) mandates "imprisonment for life or any term of years, but not less than 25 years" for any CSC I conviction "committed by an individual 17 years of age or older against an individual less than 13 years of age." In accordance with the statute, the trial court sentenced defendant to a prison term of 25 to 50 years.

No criminal defendant shall be subject to cruel or unusual punishment. Const 1963, art 1, § 16. "In determining whether a punishment is cruel or unusual, one must look to the gravity of the offense and the harshness of the penalty, compare the penalty to those imposed for other crimes in this state as well as the penalty imposed for the instant offense by other states, and consider the goal of rehabilitation." *People v Launsburry*, 217 Mich App 358, 363; 551 NW2d 460 (1996).

In arguing that the mandated minimum sentence of 25 years' imprisonment is unconstitutional, defendant compares it to the minimum sentence ranges for class A crimes under the sentencing guidelines. However, "the issue under Const 1963, art 1, § 16 . . . concerns whether the punishment concededly chosen or authorized by the Legislature is so grossly disproportionate as to be unconstitutionally 'cruel or unusual.'" *People v Bullock*, 440 Mich 15, 34 n 17; 485 NW2d 866 (1992). This constitutional concept of proportionality is distinct from the nonconstitutional principle of proportionality inherent to the sentencing guidelines. *Id.* The nonconstitutional principle of proportionality has no applicability to a legislatively mandated sentence. *Id.* Accordingly, defendant's reliance on the minimum sentence ranges contained in the sentencing guidelines is unavailing to establish the harshness of the penalty.

Defendant also claims that the 25-year minimum sentence mandated by MCL 750.520b(2)(b) "is one of the very highest among the 50 states" for sexual crimes against minors. However, numerous other states mandate a 25-year minimum sentence for adults who commit serious sexual crimes against minors. For example, a Rhode Island statute requires that a person convicted of first-degree child molestation sexual assault, defined as sexual penetration with a person 14 years of age or under, be sentenced to a minimum sentence of 25 years' imprisonment. RI Gen Laws 11-37-8.1, 11-37-8.2. Pursuant to a Tennessee statute, a person convicted of the rape of a child, defined as "the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is more than three (3) years of age but less than thirteen (13) years of age," shall be sentenced to a prison term not less than 25 years. Tenn Code Ann 39-13-

522(a), (b)(2)(A). Utah statutes mandate that a 25-year minimum sentence be given to a person convicted for the rape or object rape of a child under the age of 14. Utah Code Ann 76-5-402.1, 76-5-402.3. In Nevada, a person convicted of sexually assaulting a person under the age of 16 years shall be sentenced to life imprisonment and is ineligible for parole for a minimum of 25 years, and if the sexual assault was against a person under the age of 14 years, the defendant is ineligible for parole for 35 years. Nev Rev Stat 200.366(3)(b), (c). Mandated minimum sentences of 25 years' imprisonment are also present in Arkansas, California, Connecticut, Delaware, Florida, Georgia, Kansas, Louisiana, Maryland, Missouri (30 year minimum), Montana, North Carolina, Ohio, Oklahoma, Oregon, South Carolina, Virginia, Washington, Wisconsin, and West Virginia.⁷ Accordingly, the 25-year minimum sentence mandated by MCL 750.520b(2)(b) is not unusual. Because defendant makes no additional arguments as to why the mandated minimum sentence is unconstitutional, defendant has failed to overcome the presumption that MCL 750.520b(2)(b) is constitutional.

IX. Attorney Fees

Finally, defendant argues that the trial court erred in ordering him to pay \$600 in attorney fees without first determining whether he had the ability to pay. We disagree. In *People v Jackson*, ___ Mich ___; ___ NW2d ___ (1999), our Supreme Court overruled *People v Dunbar*, 264 Mich App 240; 690 NW2d 476 (2004), and held that a trial court is not required to conduct an ability-to-pay analysis before imposing a fee for a court-appointed attorney. The ability-to-pay analysis is required only when the imposition of the fee is enforced and the defendant contests his ability to pay. *Jackson, supra*.

The trial court entered a remittance order pursuant to MCL 769.11. Because the procedure outlined in MCL 769.11, which only allows garnishment of a prisoner's account if the balance exceeds \$50, necessarily conducts an ability-to-pay analysis before any of the prisoner's funds are taken, the trial court did not err in entering the order. *Jackson, supra*. However, if defendant contests his ability to pay 50 percent of any amount over \$50 in his account, the trial court must then conduct an ability-to-pay analysis. *Id*.

Affirmed.

/s/ Michael J. Talbot
/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra

⁷ See Ark Code Ann 5-14-103(c)(2); Cal Penal Code 288.7(a); Conn Gen Stat 53a-70c; Del Code Ann, tit 11, 4205A(a)(2); Fla Stat 775.082(4)(a)(II); Ga Code Ann 16-5-21(k), 16-6-4(d)(1); Kan Stat Ann 21-4643(a)(1)(B); La Rev Stat Ann 14:43.1(C)(2), 14:78.1(D)(2), 14:81.2(E)(1); Md Code Ann, Crim Law, 3-303(d)(4)(i), 3-305(d)(4)(i) Mo Laws 566.030(2); Mt Code Ann 45-5-503(4), 45-5-507(5); NC Gen Stat 14-27.2A, 14-27.4A; Ohio Rev Code Ann 2971.03(B)(1)(c); Okla Stat tit 10, 7115(f); Or Rev Stat 137.700(2)(b)(D); SC Code Ann 16-3-655(C)(1); Va Code Ann 18.2-61(B); Wash Rev Code 9.94A.712(3)(c)(ii); Wis Laws 939.616(1g), (1r); W Va Code 61-8B-3(c).