

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
January 15, 2013

v

ABDULLAH DUAN LAND,
Defendant-Appellant.

No. 306597
Wayne Circuit Court
LC No. 10-008570-01-FC

Before: RONAYNE KRAUSE, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Defendant was convicted by a jury of one count of first-degree criminal sexual conduct (CSC-I), MCL 750.520b, for an act of cunnilingus involving the daughter of his girlfriend. The victim was eleven years old at the time. Defendant, the victim, defendant's girlfriend, and two of defendant's girlfriend's sons all lived in the same house. The victim also asserted that defendant had touched her inappropriately on several occasions, but defendant was only charged for the act of cunnilingus. The trial court sentenced defendant to the statutory minimum of 25 years' imprisonment to a maximum of 38 years' imprisonment, with credit for 48 days served. Defendant appeals his conviction and his sentence. We affirm.

Defendant first contends that the verdict was against the great weight of the evidence and the trial court erred in declining to grant a new trial on that basis. We review the trial court's decision for an abuse of discretion; the trial court must find that "the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand," which is one of the highest hurdles our jurisprudence requires. *People v Unger*, 278 Mich App 210, 232; 749 NW2d 272 (2008). We find no abuse of discretion.

Defendant correctly explains that our Supreme Court has discussed the possibility that, in very rare situations, the trial court may take testimony away from the trier of fact if the testimony is inherently impossible or grossly implausible or has been seriously impeached in an otherwise uncertain case. *People v Lemmon*, 456 Mich 625; 643-644; 576 NW2d 129 (1998). The case at bar is not one of those rare situations.

Defendant argues that the victim's testimony lacks credibility and points out that he introduced some evidence that arguably suggested that she had a motive to fabricate. However, much of his challenges to the victim's testimony amount to the assertion that an eleven-year-old should be disbelieved for failing to undertake what defendant apparently deems the most logical

and rational course of action. It should go without saying that children are not typically best known for consistently making the most logical and rational choices, particularly when confronted with situations that any person would find distressing and probably baffling, such as abuse or a betrayal of trust by someone ostensibly in a caregiver role. More importantly, he completely fails to address the DNA evidence against him. Saliva was found in the victim's underwear, containing a mixture of the victim's DNA and a more-significant amount of defendant's DNA. This constitutes overwhelming corroborating evidence of the victim's testimony as to the actions that form the basis for the charged offense.

Finally, we observe that the jury was aware of the evidence that defendant contends shows a motive to lie, and it was explicitly instructed whether to consider whether a witness was motivated to lie. The jury was also instructed not to allow sympathy or bias to affect their decision. "Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors." *People v Abraham*, 256 Mich App 265; 279; 662 NW2d 836 (2003). While the subject matter would certainly be emotional, there is no indication from the record that the jury was unable to follow its instructions.

Defendant also argues that the mandatory minimum sentence of 25 years is grossly disproportionate to the severity of his crime and a violation of the prohibition in the Michigan and Federal constitutions against cruel and unusual punishment. We review the constitutionality of statutes de novo as a question of law. *People v Boomer*, 250 Mich App 534, 538; 655 NW2d 255 (2002). Statutes are presumed to be constitutional and will not be considered unconstitutional merely because it is unwise or unfair or otherwise bad policy. *Id.* The simple fact is that while defendant makes a plausible argument that it makes little sense as a matter of policy that any act of CSC-I, irrespective of any particulars of the specific offense or offender, should be punished more harshly than second-degree murder, *it is a policy question* and therefore inherently a question for the Legislature. In any event, defendant's argument has been thoroughly rejected by this Court. See *People v Benton*, 294 Mich App 191, 203-207; 817 NW2d 599 (2011). We will not revisit the question further today.

Affirmed.

/s/ Amy Ronayne Krause

/s/ Deborah A. Servitto