

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES LACEY THOMAS,

Defendant-Appellant.

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UNPUBLISHED

March 18, 2014

No. 312513

Wayne Circuit Court

LC No. 12-003930-FH

Before: SERVITTO, P.J., and SAWYER and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right from the August 30, 2012, judgment of sentence of the Wayne Circuit Court. Following a jury trial, defendant was convicted of one count of third-degree criminal sexual conduct (CSC), in violation of MCL 750.520d(1)(a). On appeal, defendant disputes the court's scoring of OV 3 during sentencing, contending that plaintiff did not present any evidence during the trial that defendant physically injured the victim by giving her chlamydia, a sexually transmitted disease (STD). He alternatively argues that resentencing is required because defendant presented contested evidence on this factual question and the lower court did not explicitly decide the issue. We affirm.

[W]hen the Legislature enacted the [legislative] sentencing guidelines in 1998, it prescribed detailed instructions for imposing sentences, thereby reducing the circumstances under which a judge could exercise discretion during sentencing. Under the sentencing guidelines, the circuit court's factual determinations are reviewed for clear error and must be supported by a preponderance of the evidence. Whether the facts, as found, are adequate to satisfy the scoring conditions prescribed by statute, i.e., the application of the facts to the law, is a question of statutory interpretation, which an appellate court reviews de novo. [*People v Hardy*, 494 Mich 430, 438; 835 NW2d 340 (2013). Footnotes omitted.]

A finding is clearly erroneous if “the reviewing court is left with a definite and firm conviction that a mistake has been made.” *People v Johnson*, 466 Mich 491, 497-498; 647 NW2d 480 (2002).

OV 3, embodied in MCL 777.33, states as follows in relevant part:

(1) Offense variable 3 is physical injury to a victim. Score offense variable 3 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

\* \* \*

(d) Bodily injury requiring medical treatment occurred to a victim . . . 10 points

\* \* \*

(3) As used in this section, “requiring medical treatment” refers to the necessity for treatment and not the victim’s success in obtaining treatment.

Defendant argues that it was not established that the victim contracted chlamydia as a result of the assault, only that she was treated prophylactically for it. Evidence was provided at trial pertaining to the victim receiving chlamydia was the testimony of a director at the Sexual Assault Nurse Program. At trial, the witness testified that, during the examination of the victim, the witness treated the victim for “gonorrhea, chlamydia, and trichomonis, and the prophylaxis is for preventative, and there was also a pregnancy prophylaxis.” These statements establish that the victim received treatment for chlamydia, but not that she actually contracted chlamydia. However, the PSIR and its attached Investigator’s Report indicated that the victim was notified that she had chlamydia after being given a rape kit at WCSAFE. It also appears that the victim and her mother were present during the sentencing hearing, as the prosecutor asked the victim and her mother about the infection in the middle of the hearing. The prosecutor then relayed their statements on the record confirming that the victim had been infected with chlamydia. Defendant stated during sentencing that he was given a medical test while detained at the Wayne County Jail, and that he did not have any STDs at that time. However, defendant did not provide any documentary proof of his medical examination and, the result of such an examination would not necessarily rule out defendant as a source, in that he could have been treated for the disease following the sexual contact but before the examination. In light of this evidence, the court did not clearly err in finding that defendant infected the victim with chlamydia. Although defendant correctly notes that there was disputed evidence on this matter, the court considered the evidence and implicitly found that defendant had infected the victim with chlamydia.

To the extent that defendant contends that resentencing is required so that the court can make findings of fact on this factual question, remand and resentencing are unnecessary. Defendant brought this factual question to the lower court’s attention, and the court was presented with the above facts. It ruled in plaintiff’s favor based on these facts, so the court implicitly resolved this factual question during the hearing. Thus, there is no reason for remand or resentencing on this basis. Accordingly, the court’s scoring of OV 3 was not erroneous and does not require reversal.

Affirmed.

/s/ Deborah A. Servitto  
/s/ David H. Sawyer  
/s/ Mark T. Boonstra