

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALEX TYRONE COOPER,

Defendant-Appellant.

UNPUBLISHED

December 22, 1998

No. 203695

Recorder's Court

LC No. 94-004133

Before: Murphy, P.J., and Fitzgerald and Gage, JJ.

PER CURIAM.

Defendant was charged with two counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(e); MSA 28.788(2)(1)(e), (count I anal intercourse, count II fellatio), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Following a bench trial, defendant was convicted of two counts of CSC I. Defendant was sentenced concurrently to four to twenty years' imprisonment for each conviction. Defendant appeals as of right. We affirm.

Defendant first contends that due to inconsistencies in the victim's testimony, the trial court's findings were clearly erroneous and the verdict was against the great weight of the evidence. A trial court's findings of fact will not be disturbed by the appellate court unless they are clearly erroneous. *People v Gistover*, 189 Mich App 44, 46; 472 NW2d 27 (1991). A new trial based on the weight of the evidence should be granted only where the evidence preponderates heavily against the verdict and a serious miscarriage of justice would otherwise result. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). Our review of the record reveals that the dispositive issue in this case involved the credibility of the witnesses. Defendant did not dispute that he engaged in fellatio and anal intercourse with the victim, but asserted that the acts were consensual. The victim testified that while she had voluntarily entered defendant's vehicle, she remained there due to defendant's possession of a gun and his threats of physical harm unless she complied with his demands. The trial court observed the witnesses and evaluated their credibility, and concluded that defendant's version of the events was incredible. Because we defer to the trial court's credibility determination, *People v Howard*, 226 Mich App 528, 543; 575 NW2d 16 (1997), and because the evidence does not weigh heavily against the

trial court's verdict, we conclude that the trial court's findings were not clearly erroneous and that the verdict did not contravene the great weight of the evidence.

Defendant also argues that the admission of hearsay testimony by Redford Police Officer Patricia Goulah, the officer in charge of the case, was erroneous and prejudicial. In a proceeding before a different judge prior to the commencement of defendant's bench trial, Goulah had testified regarding her involvement in the case, including her taking of statements from both defendant and the victim. Goulah did not testify at defendant's bench trial, but the parties agreed that the judge presiding over the bench trial would review Goulah's transcribed testimony. Therefore, defendant may not now predicate error where he acquiesced to the court's review of Goulah's testimony. *People v Barclay*, 208 Mich App 670, 673; 528 NW2d 842 (1995) ("To hold otherwise would allow defendant to harbor error as an appellate parachute."). Nor did defendant object when the transcript of Goulah's testimony was subsequently entered into evidence.

Furthermore, any alleged error arising from the trial court's review of Goulah's testimony would have been harmless. The trial court sat as the factfinder, and is presumed to possess an understanding of the law, which allows it to understand the difference between admissible and inadmissible evidence or statements. *People v Wofford*, 196 Mich App 275, 282; 492 NW2d 747 (1992). The only specific portion of the record that defendant cites as erroneously admitted in his brief on appeal contains Goulah's testimony based on her notes of defendant's post-arrest statement. The trial court's consideration of these alleged hearsay statements would also have been harmless because these statements were cumulative in light of both defendant's and the victim's testimony at the bench trial. *People v Rodriguez (On Remand)*, 216 Mich App 329, 332; 549 NW2d 359 (1996).

Next, defendant has abandoned our review of his assertion that he was entitled to a City of Detroit preliminary examination by failing to cite authority in support of his position. *People v Hill*, 221 Mich App 391, 397 n 2; 561 NW2d 862 (1997). In any event, venue in Redford Township District Court was proper pursuant to MCL 762.3(3)(b); MSA 28.846(3)(b).

Lastly, defendant claims that the initial trial judge's failure to entertain his objection to the jury's composition forced him to waive his right to a jury trial. However, defendant's bald assertion that the jury did not represent a fair cross-section of the community was insufficient to show that the underrepresentation of African-Americans was due to systematic exclusion. *People v Flowers*, 222 Mich App 732, 737; 565 NW2d 12 (1997). Moreover, our review of the record reveals that the trial court questioned defendant extensively regarding his desire to waive his right to a jury trial, and that defendant also signed a waiver form. Therefore, we conclude that defendant knowingly and voluntarily waived his right to a jury trial. See MCR 6.402(B); *People v Reddick*, 187 Mich App 547, 549-550; 468 NW2d 278 (1991).

Affirmed.

/s/ William B. Murphy
/s/ E. Thomas Fitzgerald
/s/ Hilda R. Gage