STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD ALLAN DEAN,

Defendant-Appellant.

UNPUBLISHED
June 24, 2021

No. 353110
Kalamazoo Circuit Court
LC No. 2018-002294-FC

Before: RONAYNE KRAUSE, P.J., and RIORDAN and O'BRIEN, JJ.

PER CURIAM.

Defendant Richard Allen Dean appeals as of right his convictions and sentence for criminal sexual conduct in the first degree (CSC-I), MCL 750.520b(2)(b) (victim under 13); criminal sexual conduct in the second degree (CSC-II), MCL 750.520c(2)(b) (victim under 13); assault with intent to commit CSC-II, MCL 750.520g(2); and accosting a minor for immoral purposes, MCL 750.145a. The trial court sentenced defendant as a third-offense habitual offender, MCL 769.11, to concurrent terms of 25 to $37^1/_2$ years' imprisonment for CSC-I; 5 to 30 years' imprisonment for CSC-II; 1 to 10 years' imprisonment for assault with intent to commit CSC-II; and 1 to 8 years' imprisonment for accosting a child for immoral purposes.

On appeal, defendant argues that (1) the trial court abused its discretion by admitting other-acts evidence, (2) the trial court abused its discretion when it qualified Thomas Cottrell as an expert in child memory and that Cottrell vouched for the victim's credibility, and (3) his sentence is cruel and unusual. We affirm.

I. FACTS AND HISTORY

This case arises out of defendant's sexual abuse of the victim, who was his step-granddaughter and who was 16 years old at the time of trial. The victim testified that defendant molested her on two occasions when she was in the fifth grade. The victim also testified that in 2016, defendant picked her up on his motorcycle to go to his house, but instead of immediately doing so, he drove to a secluded area by "a lake or river" and told her that he wanted to have sex with her. This made the victim uncomfortable, and she told her father about the incident shortly thereafter. The police eventually became involved in the case.

In addition to the victim's testimony, the prosecutor introduced the testimony of two other witnesses who were victimized by defendant in a similar manner, ED and CL.[1] ED testified that her father was defendant's cousin, and that one day when she was about 15 years old, defendant offered her a ride on his motorcycle. ED explained that defendant drove her on "back roads," and during the ride, he put his hand on her lap and rubbed her leg. This made ED uncomfortable. When they stopped in town for food, defendant told ED that she was pretty and that if they were the same age, "he would get with [her]."

CL also testified that her father was defendant's cousin, and that when she was 12 years old, defendant offered her a motorcycle ride. They went to a park and then to a store to buy a drink. At the store, defendant asked whether he could kiss CL on the lips and did so despite her refusal. The situation made CL uncomfortable, and she disclosed it to her father about two or three years later.

The jury found defendant guilty as charged, and he now appeals.

II. OTHER-ACTS EVIDENCE

Defendant first argues that the trial court abused its discretion by admitting other-acts evidence of ED and CL under MCL 768.27a and MRE 404(b). We disagree, in part. "The admissibility of other-acts evidence is within the trial court's discretion and will be reversed on appeal only when there has been a clear abuse of discretion." *People v Waclawski*, 286 Mich App 634, 669-670; 780 NW2d 321 (2009). "However, when the decision whether to admit evidence involves a preliminary question of law, . . . we review the legal issue de novo." *People v Watkins*, 277 Mich App 358, 362-363; 745 NW2d 149 (2007). Reversal is only required if the admission of the evidence is prejudicial. *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999). "[A] preserved, nonconstitutional error is not a ground for reversal unless 'after an examination of the entire cause, it shall affirmatively appear' that it is more probable than not that the error was outcome determinative." *Id*. at 496, quoting MCL 769.26.

Ordinarily, a prosecutor may not introduce evidence of the defendant's previous crimes to show the defendant's propensity toward criminality. *Waclawski*, 286 Mich App at 670. "Use of other acts as evidence of character is excluded, except as allowed by MRE 404(b), to avoid the danger of a conviction based on a defendant's history of misconduct." *Id*. MRE 404(b)(1) provides as follows:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other

[1] The trial court held a hearing before trial at which it concluded that the testimony of ED and CL was admissible under both MCL 768.27a and MRE 404(b). During final instructions, the trial court informed the jury that it could consider their testimony "in deciding if the defendant committed the offenses for which he is now on trial."

> crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

In addition, MCL 768.27a provides that in a case in which the defendant is charged with a sexual offense against a minor, as here, evidence that the defendant committed another such offense is admissible for any relevant purpose:

> (1) Notwithstanding [MCL 769.27], in a criminal case in which the defendant is accused of committing a listed offense against a minor, evidence that the defendant committed another listed offense against a minor is admissible and may be considered for its bearing on any matter to which it is relevant. . . .
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> (2) As used in this section:
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> (a) "Listed offense" means that term as defined in section 2 of the sex offenders registration act, 1994 PA 295, MCL 28.722.
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> (b) "Minor" means an individual less than 18 years of age.[2]

The purpose of the statute is to broaden the range of evidence admissible in such cases. *People v Smith*, 282 Mich App 191, 204; 772 NW2d 428 (2009). Evidence admissible under MCL 768.27a remains subject to exclusion under MRE 403,[3] *People v Watkins*, 491 Mich 450, 481; 818 NW2d 296 (2012), but not merely because it allows a jury to draw a propensity inference, *id*. at 487. In determining whether to exclude MCL 768.27a evidence under MRE 403, a court may consider the following illustrative, but not exhaustive, list:

> (1) the dissimilarity between the other acts and the charged crime, (2) the temporal proximity of the other acts to the charged crime, (3) the infrequency of the other acts, (4) the presence of intervening acts, (5) the lack of reliability of the evidence supporting the occurrence of the other acts, and (6) the lack of need for evidence beyond the complainant's and the defendant's testimony. [*Id*. at 487-488.]

In this case, the following two offers of proof were submitted to the trial court before trial:

> (a) ED, age 15 or 16
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> ED is a cousin of Defendant. Defendant's father is ED's uncle. ED will testify that when she was 15 or 16 (around 2012 or 2013) Defendant would always

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[2] MCL 768.27 is the statutory analogue to MRE 404(b).

[3] MRE 403 provides as follows:

> Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

> offer to take her on motorcycle rides. Once, Defendant showed up at her grandmother's house. He took her on a motorcycle ride. They road [sic] about an hour out into the countryside. During the ride, Defendant would reach back and touch her leg. It was her thigh and lower leg and was for almost the entire motorcycle ride. It made her feel uncomfortable. They stopped for food and Defendant said that if she was older, closer to his age, or if he was younger that he would "do stuff" with her. E.D. took this as sexual in nature and thought it was weird he would say something like that to her.
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> (b) CL, age 12
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> CL's father is Defendant's cousin. When CL was 12 (around 2012), Defendant would come over and ask victim if she wanted to go on a motorcycle ride. When they got about 45 minutes away, Defendant asked "If I buy you something to drink, can I touch you?" CL interpreted this as a non-alcoholic drink. She said no and they stopped somewhere on a lake with a picnic table. Defendant told her his wife wouldn't have sex with him and he grabbed CL in a bear hug. She could barely move and he kissed her on the lips. Defendant was holding her head still and touching her leg. CL went home and told her mother, ND, who said "that's just him".[4]

The trial court ruled that the testimony of ED and CL was admissible under MCL 768.27a, apparently concluding that defendant committed the offense of accosting a minor for immoral purposes, MCL 750.145a, against ED and CL. The trial court ruled that their testimony was admissible under MRE 404(b) as well.

With respect to ED, we acknowledge that the offer of proof did not establish that she was under 16 years old when defendant engaged in misconduct with her. And because MCL 750.145a requires the victim to be under 16 years old, defendant's misconduct in this regard could not have been the predicate "listed offense" under MCL 768.27a(2)(a). See MCL 28.722(j) (defining "listed offense" as "a tier I, tier II, or tier III offense") and MCL 28.722(u)(*i*) (providing that "tier II offense" includes a violation of MCL 750.145a).[5] Therefore, the trial court abused its discretion by ruling that her testimony was admissible under MCL 768.27a.

However, evidence is properly admitted under MRE 404(b) for the purpose of proving a common plan, scheme, or design, so long as the prior act and the charged acts have a sufficient degree of shared characteristics. *People v Steele*, 283 Mich App 472, 479-480; 769 NW2d 256 (2009). ED's testimony helped establish that defendant had a common plan, scheme, or design of isolating his family-member victims on motorcycle rides to rural areas and making inappropriate sexual advances. The distinctive shared characteristics of the charged and uncharged acts rise to

[4] ED and CL testified mostly consistent with the prosecutor's pre-trial offer of proof.

[5] MCL 28.722 was amended effective March 24, 2021. See 2020 PA 295. We refer to the version of the statute in effect at the time of trial, see 2015 PA 328, but note that our analysis would be identical under either version of the statute.

the level of "striking similarity." See *People v Denson*, 500 Mich 385, 402-404; 902 NW2d 306 (2017). Her testimony was also relevant because it elevated the victim's credibility and made the victim's testimony more probable by corroborating multiple details. Moreover, her testimony was not unduly prejudicial under MRE 403 because it did not describe any particularly aggressive actions by defendant, and he has not identified any other prejudicial aspects of the testimony. We therefore conclude that the trial court did not abuse its discretion by admitting ED's testimony under MRE 404(b) and that any error in admitting the testimony under MCL 768.27a was harmless.[6]

With respect to CL, we conclude that the trial court did not abuse its discretion by admitting her testimony under MCL 768.27a. As the prosecutor argued at the motion hearing, defendant's misconduct against CL constituted accosting a minor for immoral purposes because she was 12 years old at the time of the incident, and he acted inappropriately by kissing her on the lips, grabbing her, and touching her legs, conduct that would surely be considered "immoral actions" under MCL 750.145a. And accosting a minor for immoral purposes is undisputedly a "listed offense" under MCL 768.27a(2)(a). See MCL 28.722(u)(*i*) (providing that a violation of MCL 750.145a is a "tier II offense").

Similar to ED's testimony, CL's testimony was relevant to show that defendant had a propensity to isolate the younger female members of his family on motorcycle rides to sexually harass and assault them. Such testimony aided the credibility of the victim, who testified about similar details in her experiences with defendant. Nor was CL's testimony unduly prejudicial under MRE 403, given that it did not describe overt acts of violence or concern other potentially prejudicial details that would be improper for the jury to consider in this context.

Defendant contends that multiple *Watkins* factors do not support the admission of CL's testimony. First, defendant argues that CL's testimony was dissimilar from the actions that the victim described. However, CL and the victim both experienced very similar incidents. Defendant took both CL and the victim on a motorcycle ride. Defendant bought both of them a drink, and took them to a rural area. Defendant told the victim that he would like to have sex with her, whereas defendant asked CL if he could touch her and then kissed her. Both of these incidents appear to be strikingly similar.

Second, defendant argues that there was no indication whether the events occurred close in time. The prosecutor noted at the motion hearing that CL's assault happened in 2012. The prosecutor also noted that the victim's motorcycle ride took place in 2016, but the two separate instances of CSC happened in 2014 when she was 10 years old. These time frames are not far apart. And it would show that both CL and the victim were approximately 12 years old when defendant took them on their respective motorcycle rides. Therefore, the *Watkins* factors that defendant argues against actually weigh in favor of admitting CL's testimony.

[6] We note that defendant conceded during oral argument in this Court that the trial court gave "proper limiting instructions" concerning ED's testimony.

For these reasons, we conclude that the trial court did not abuse its discretion by admitting ED's testimony under MRE 404(b) and CL's testimony under MCL 768.27a.[7]

III. EXPERT TESTIMONY

Defendant next argues that the trial court abused its discretion when it qualified Thomas Cottrell as an expert in child memory and that Cottrell vouched for the victim's credibility. We disagree.

> A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion. The decision to admit evidence is within the trial court's discretion and will not be disturbed unless that decision falls outside the range of principled outcomes. A decision on a close evidentiary question ordinarily cannot be an abuse of discretion. [*People v Thorpe*, 504 Mich 230, 251-252; 934 NW2d 693 (2019) (quotation marks and citations omitted).]

"[I]f the issue is preserved, the defendant has the burden of establishing a miscarriage of justice under a more probable than not standard." *Id*. at 252 (quotation marks and citation omitted).

Qualifying an expert witness is governed by MRE 702[8] and the following three-part test: "(1) the witness must be an expert; (2) there must be facts in evidence which require or are subject to expert analysis; and (3) the knowledge of the expert must be in a field where knowledge belongs more to experts than to the common man." *People v Beckley*, 161 Mich App 120, 125; 409 NW2d 759 (1987). When an expert is qualified to testify in a case involving sexual abuse, our Supreme Court has established the following guidelines: "(1) an expert may not testify that the sexual abuse occurred, (2) an expert may not vouch for the veracity of a victim, and (3) an expert may not testify whether the defendant is guilty." *People v Peterson*, 450 Mich 349, 352; 537 NW2d 857 (1995).

In this case, defendant argues that the trial court abused its discretion when it qualified Cottrell as an expert in child memory. But defendant does not analyze the steps necessary to "qualify" an expert witness or how the trial court may have abused its discretion. Instead, defendant simply states that Cottrell's testimony improperly vouched for the credibility of the victim. "It is not sufficient for a party simply to announce a position or assert an error and then

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[7] Because MCL 768.27a prevails over MRE 404(b), an MRE 404(b) analysis as to CL's testimony is unnecessary. See *Watkins*, 491 Mich at 455, 472-478.

[8] MRE 702 provides as follows:

> If the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise if (1) the testimony is based on sufficient facts or data, (2) the testimony is the product of reliable principles and methods, and (3) the witness has applied the principles and methods reliably to the facts of the case.

leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject his position." *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998) (quotation marks and citation omitted). Therefore, defendant has abandoned the first part of his issue statement, which would include the steps the trial court took to "qualify" Cottrell as an expert witness.[9]

Defendant relies on *Thorpe*, in which Cottrell also testified as an expert, and argues that his testimony was used to vouch for the victim's credibility just as it was in the case before us. We disagree. In *Thorpe*, Cottrell testified that only 2% to 4% of children lie about sexual abuse. *Thorpe*, 504 Mich at 239-240, 259. Cottrell also identified two scenarios in which children "might lie"—when the child's sibling has been sexually abused or when there is other domestic violence in the home. *Id*. In *Thorpe*, our Supreme Court said:

> We conclude that Thorpe has shown that it is more probable than not that a different outcome would have resulted without Cottrell's testimony that children lie about sexual abuse 2% to 4% of the time. . . . Here, not only did Cottrell opine that only 2% to 4% of children lie about sexual abuse, but he also identified only two specific scenarios in his experience when children might lie, neither of which applies in this case. As a result, although he did not actually say it, one might reasonably conclude on the basis of Cottrell's testimony that there was a 0% chance BG had lied about sexual abuse. In so doing, Cottrell for all intents and purposes vouched for BG's credibility. [*Id*. at 259.]

In this case, Cottrell's testimony is distinguishable from his testimony in *Thorpe*. Cottrell testified that sometimes an individual may feel "otherworldly" when recalling childhood abuse, or "dissociative," "confused," or "disconnected." Cottrell further testified about central and peripheral memory as follows:

> [*Thomas Cottrell*]: Anytime we recall an event we are susceptible to outside influences. One of the tricky things about memory is we always try to plug holes for the things we forget, and so if a child was confused or just didn't have all the pieces to the memory—if there was suggestions as to how to flush that memory out, they may hang to those events and make them a part of the memory.
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> Again, this is not unique to child sexual abuse. It happens with every single memory that we have. Memory by its very nature degrades over time. We lose what we call peripheral detail, so the things that are not the main focus of the memory. Every time we talk about a memory or rehearse a memory or think about that event, we are actually re-remembering it, and if there is new input we remember that as part of the original memory then.

[9] We note that defendant conceded that Cottrell was qualified "in the areas of delayed disclosure and offender dynamics," which Cottrell explained at trial included the area of "child memory" and "delayed disclosure." We do not believe defendant would have any meritorious grounds to challenge Cottrell's qualifications in any event.

So, yes any—for any memory not necessarily the child sexual abuse. If there are outside influences while we're recalling something that fill in gaps or make the memory make more sense, we may hang onto those and say now that's part of the memory.

[*Prosecutor*]: In that scenario is the person truly believing the gaps that they filed in?

[*Thomas Cottrell*]: That is part of their memory now, yes.

[*Prosecutor*]: Is there a difference between the central events and peripheral events in the memory?

[*Thomas Cottrell*]: What we know from the memory research is that the central events don't degrade nearly as easily as a peripheral one; so there's not a hole to fill. So, essentially, the central memory, the primary focus of the—the memory, stays consistent, but the peripheral details are very subject to error.

[*Prosecutor*]: What do you mean by peripheral details in terms of a child sexual abuse case? What would be the types of things that are peripheral?

[*Thomas Cottrell*]: It can be the clothing that was worn, the location, time of day, weather, season. You know, the things that are not part and parcel to the actual assault itself. But, I must also add to that that what is central will be different for everyone.

So, for some folks the assailant's face may be tremendously central, because that's what they looked at the entire time, and they may not even being connecting to their location. Whereas other victims focused on their pain and may not even remember what the assailant looks like. So, it is very different for each person, but the—whatever they focused on centrally during that assault is typically the core of their memory and that typically stays in tack, but the peripheral events that they weren't really attending to can be—will be forgotten and can be replaced or influenced from external sources.

[*Prosecutor*]: Are the peripheral memories sometimes conflated from other experiences?

[*Thomas Cottrell*]: They can be. As someone tries to process a memory what they'll be doing is looking to other memories that are similar. So, you know, were there other bedtime events that didn't involve abuse, but were similar to going to bed and things like that may fill in. Our brains are always trying to contextualize or put our memories into a context, and so they will fill in gaps from events that are similar.

[*Prosecutor*]: And, In that case the person truly—in the scenario you described is a person truly believing that they have this memory?

> [*Thomas Cottrell*]: Yes. They have essentially reprocessed the memory, so now what they believe is theirs is the last time they remembered it, and it's true for all of us. This is true for all memory. Once you've told a story that you believe is true it will be true to you.

Defendant argues that this colloquy improperly vouched for the victim's credibility because Cottrell essentially said that the "victim" can get all the details wrong, and this points to the victim's veracity as to the "central" occurrence. Defendant further emphasizes that Cottrell's testimony concerning child memory implied that the less the child remembered, or the more confusing the child's memory, the more credible is the "central" event of the abuse. We do not agree with his framing of Cottrell's testimony and do not find his testimony to be improper vouching.

Cottrell did not testify, as defendant suggests, that the more confusing the child's memory, the more credible the central event is. Importantly, the purpose of Cottrell's testimony was explained at the outset of that testimony: There are "areas in child sexual abuse that are counterintuitive." Defendant's argument is that Cottrell's testimony must be scientifically infirm specifically because it is counterintuitive. Cottrell explained that child sexual assault victims will generally remember a "central" or "primary" event accurately, but tend to scramble or overwrite their memories of peripheral details that the child did not necessarily regard as important at the time. In other words, whether a child accurately recalls the clothing that was worn, the time of day, the weather, or similar circumstantial details is not probative of whether the child accurately recalls the "central" event. Defendant therefore entirely misunderstands Cottrell's testimony.[10] Cottrell did not specifically tailor his testimony to the victim's story, and in fact, he testified that he did not know the victim's testimony or the other-acts witnesses' testimony. Unlike in *Thorpe*, in this case, Cottrell did not give a percentage of how often children lie or imply that children rarely lie. Cottrell's testimony merely explained that mistakes as to trivial details were not reliable indicators of the truth or falsity of the "central" recollection, with no indication of any probabilities beyond a mere general tendency. Therefore, Cottrell's testimony did not cross the line into vouching for the victim's credibility, and his expert testimony was appropriate.

Defendant notes that Cottrell testified that a reason a child would lie would be for some sort of benefit. Defendant argues that the prosecutor used Cottrell's cost/benefit testimony in a "roundabout" way to reinforce the victim's credibility because the prosecutor argued in closing that the victim got no benefit from accusing defendant. Defendant again misapprehends Cottrell's testimony. Cottrell did testify about children making a cost/benefit analysis, but on direct

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[10] Moreover, Cottrell explained that this was generally how memories worked for everyone, and "traumatic memory" in particular tended to be stored in a relatively disjointed manner as linked to emotions rather than factual contexts. He noted that "everyone tunes into what's important to them," which would differ from both adult to adult and from child to child. Indeed, on cross-examination, Cottrell conceded that there was not necessarily any way to know what any particular individual would regard as central or peripheral, beyond a general tendency for times and dates to be less important to children than they are to adults.

examination, he initially did so in the context of children making a decision whether and when to make a disclosure rather than about lying. The topic of children lying was brought up by defendant on cross-examination, so arguably any error in Cottrell's response would be invited. *People v McPherson*, 263 Mich App 124, 138-139; 687 NW2d 370 (2004). In any event, Cottrell merely conceded that children lie like anyone else, we "usually don't know why they lie," and he would not even attempt to opine as to whether the allegations in this matter were true. On redirect examination, Cottrell testified that in general, children would lie to gain some kind of advantage or to avoid some kind of trouble, but he emphasized that he was only talking about "lying in general" and not about sexual abuse disclosures.[11] Cottrell also testified that he had been told only a very general overview of the case and knew nothing about any particular details or individuals involved. Although *Thorpe* mentioned that Cottrell had testified about "the cost/benefit analysis children make in deciding whether to disclose abuse," Cottrell's testimony about lying in that case was intertwined with his testimony that children rarely lie because they would gain no benefit from doing so. *Thorpe*, 504 Mich at 239-240. *Thorpe* did not prohibit generally discussing the cost/benefit analysis; rather, the Court prohibited testifying to the veracity of witness's credibility. See *id*. at 259. Cottrell's testimony in this case came nowhere near vouching for the victim.

Further, in *Thorpe*, the prosecutor's closing arguments focused on Cottrell's testimony when it argued:

> The defense attorney asked you, why would [The Victim] lie? It's a very good question. You need to think about that, because she did not. Mr. Cottrell did say that it's very rare for children to lie. His percentage was less than two to four percent of all of those cases that his agency sees.
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> But he said one of the reasons they don't [lie] is because there is no gain for the victim. What [did the victim] get out of this? She didn't get [sic] attorney. She had to go to a forensic interview. She had to testify at a prelim, she had to testify here at trial. There is no gain for any of that. She had to talk about this a lot, about what happened to her. [*Id*. at 260.]

In this case, in contrast, the prosecutor only mentioned the cost/benefit analysis in the following two instances:

> The reasons—the child goes through a cost benefit analysis, which causes more emotional pain to them—to risk talking about what happened to them, or to endure what happened to them.
>
> [The victim's aunt] has even told you—[the victim] has had no positive changes, no benefits; that's her testimony. [The victim] was in distress when she was brought to court having to deal with this.

[11] The prosecutor attempted to ask whether "children lie in a sexual abuse scenario," but defendant objected before Cottrell could respond, whereupon the prosecutor withdrew the question, leaving it unanswered.

These arguments are much different than the argument's in *Thorpe*. Here, the prosecutor did not focus on the fact that the victim could not have lied. Instead, the prosecutor mentioned the cost/benefit analysis and explained that the victim simply did not receive any benefit. This is a fair comment on the evidence. Therefore, the prosecutor's closing arguments in this case do not cross the line set in *Thorpe*.

IV. 25-YEAR MINIMUM SENTENCE

Defendant finally argues that his 25-year minimum sentence under MCL 750.520b(2)(b) is unconstitutional as in violation of the Eighth Amendment of the United States Constitution, US Const, Am VIII, and Const 1963, art 1, § 16 of the Michigan Constitution prohibitions against cruel and/or unusual punishment. We disagree. As defendant acknowledges, his argument is foreclosed by *People v Benton*, 294 Mich App 191; 817 NW2d 599 (2011), in which we held that the 25-year mandatory minimum of MCL 750.520b(2)(b) does not violate either constitutional provision. See *id*. at 203, 207.

V. CONCLUSION

Defendant's arguments are without merit. Accordingly, we affirm his convictions and sentence.

/s/ Amy Ronayne Krause
/s/ Michael J. Riordan
/s/ Colleen A. O'Brien