STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 16, 2013
v	No. 309339 Wayne Circuit Court
LONNIE CARL THOMAS, Defendant-Appellant.	LC No. 10-009279-01-FC

Before: BECKERING, P.J., and JANSEN and M. J. KELLY, JJ.

PER CURIAM.

Defendant, Lonnie Carl Thomas, appeals as of right his jury-trial convictions of three counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a) and (2)(b). The jury convicted him on the basis of allegations of sexual abuse made by a child whom he babysat. The trial court sentenced defendant to 25 to 40 years' imprisonment for each conviction, to be served concurrently. We affirm.

I. VOIR DIRE

Defendant first contends that the trial judge, who conducted the entire voir dire himself, asked a minimal amount of vague and standard questions, none of which delved into any true bias that might be present within the jury pool. Defendant claims that the trial court failed to explore facts specific to the case, including "such key factors as homosexual acts, the age of the complaining witness, [and] whether a youth witness is capable of making things up." Given these omissions and the failure to allow the prosecution and defense counsel who knew the case to conduct voir dire, defendant claims that he was denied a fair trial. The record reflects that defendant never objected to the trial court's procedure, never offered additional questions, and failed to object to the jury that was ultimately chosen after the trial court declared "[w]e have a jury." He also declined to exercise all of his peremptory challenges. Given this record, we conclude that defendant waived this issue for appellate review. "Where a party fails to object to the method of jury selection at trial, he has waived the issue on appeal." *People v Schmitz*, 231 Mich App 521, 526; 586 NW2d 766 (1998), overruled in part on other grounds *People v Bell*, 473 Mich 275; 702 NW2d 128 (2005).

Notwithstanding defendant's waiver, our review of the record reveals that the trial court did not plainly error when conducting voir dire. See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). The purpose of voir dire is to "elicit sufficient information from

prospective jurors to enable the trial court and counsel to determine who should be disqualified from service on the basis of an inability to render decisions impartially." *People v Sawyer*, 215 Mich App 183, 186; 545 NW2d 6 (1996). In accomplishing this purpose, the trial court has "considerable discretion in both the scope and conduct of voir dire." *Id.*, citing *People v Tyburski*, 445 Mich 606, 619; 518 NW2d 441 (1994); MCR 6.412(C).

The record demonstrates that during voir dire, which comprises 76 pages of the trial transcript, the trial court adequately questioned the jurors regarding potential bias; it did not merely pose a minimal number of vague questions. In particular, the trial court explained the concept of the burden of proof and posed numerous questions related to being a juror in general and to this specific case. The trial court followed up with more probing questions if a juror answered a question in the affirmative. On the basis of its questions, the trial court excused several jurors who had close connections to someone who had been the victim of a sexual crime. The prosecutor successfully challenged one juror for cause on this basis. Defendant exercised nine peremptory challenges.

Although the trial court did not question the jurors regarding their feelings about homosexual acts, this inquiry was irrelevant because this case did not involve such circumstances. The trial court did not inquire whether the jurors believed a child witness was capable of making things up, but it did ask whether they had children, their children's ages, and whether they could be impartial. The trial court never stated on the record that it would refuse to allow questions from the prosecutor or defense attorney. Accordingly, defendant has not shown that the trial court failed to "elicit sufficient information from prospective jurors to enable the trial court and counsel to determine who should be disqualified from service on the basis of an inability to render decisions impartially." *Sawyer*, 215 Mich App at 186. There is no plain error. See *Carines*, 460 Mich at 763-764.

II. PROSECUTORIAL MISCONDUCT

Defendant contends that the prosecutor committed several instances of misconduct. Because defendant did not object to any of the challenged conduct, appellate review is limited to plain error. See *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003). Relief is generally precluded unless "an objection could not have cured the error, or a failure to review the issue would result in a miscarriage of justice." *Id.* (citations omitted).

According to defendant, the prosecutor's remarks during her closing argument deprived him of a fair trial because they were inflammatory and disparaging toward him. The prosecutor argued as follows, in pertinent part:

> What is not in dispute, [defendant] was a man people knew and trusted, people thought was a good guy. Even [the victim's] own mother sat there and told you [defendant] was a good man. I loved him, I trusted him, I believed in him, I had faith in him. She did not paint him to be some kind of monster. She didn't know he was a *creep* and I [sic] should not have let my [sic] baby with him.

> One of the things I said in opening statement is that baby sitters [sic] don't come with warning labels. [Defendant] didn't come with a I'm a *creepy pervert*, leave me alone with your little girl and I will have oral sex with her.
>
> We give kids medicine, toys, movies, all have warning labels. [Defendant] didn't. The reputation you heard he had in the community from play sisters and friends he has known for 20 years and different kids he watched, what was his reputation? Exactly what [the victim's mother] told. He was a good man. The kind of person people trusted with their kids. No matter what his relationship was with other kids, no matter what else he did in the world, he was the kind of person these women felt safe leaving their children alone with. [Emphasis added to terms to which defendant objects.]

Although arguably objectionable, we conclude that the prosecutor's harsh terminology did not rise to the level of prosecutorial misconduct warranting reversal. The prosecution may employ emotional language in closing arguments and need not resort to the blandest possible terms. *People v Ackerman*, 257 Mich App 434, 454; 669 NW2d 818 (2003); *People v Launsburry*, 217 Mich App 358, 361; 551 NW2d 460 (1996). This Court has found no error requiring reversal in other instances when the prosecution used strong language.[1] Moreover, the prosecutor did not use the challenged language merely to arouse the jury's prejudice. See *People v Lee*, 212 Mich App 228, 247; 537 NW2d 233 (1995) (holding that a prosecutor's arguments were not improper where the prosecutor did not intentionally inject inflammatory arguments to arouse prejudice). Rather, when viewing the prosecutor's argument in the context of her theory of the case, the trial evidence, and the defense theory, it is apparent that the prosecutor was attempting to illustrate that defendant had the opportunity to be alone with the victim and commit the sexual acts precisely because he had a reputation of being trustworthy and not a "creepy pervert." See *People v Rice (On Remand)*, 235 Mich App 429, 434-435; 597 NW2d 843 (1999) (explaining that a reviewing court reviews alleged improper remarks by a prosecutor in context). Faced with having no physical evidence of the crimes, the prosecutor argued that defendant was commonly thought of as trustworthy but that he took advantage of that trust to gain access to the victim. In contrast, the defense emphasized the lack of physical evidence and asserted that the case turned on whether the jury believed the young victim's testimony or the testimony of defendant's character witnesses.

---

[1] See, e.g., *People v Cox*, 268 Mich App 440, 451-453; 709 NW2d 152 (2005) (finding no error requiring reversal where the prosecutor asserted that the defendant liked young boys and groomed them before taking advantage of them, that he was "one of the worst types of predators" who exploited weaker people for his own pleasure, and that he should not be "allowed to coexist with young people"); *People v Williams*, 265 Mich App 68, 70-71; 692 NW2d 722 (2005) (finding no error requiring reversal where the prosecutor referred to the defendant as "cold blooded" and the crime as "evil"); *Ackerman*, 257 Mich App at 454 (finding no error requiring reversal where the prosecutor argued that the defendant exploited an entire community of children and picked on those from broken homes who were vulnerable); *Launsburry*, 217 Mich App at 361 (finding no error requiring reversal where the prosecutor called the defendant a "moron," "idiot," and "coward").

Further, although defendant did not object or request a curative instruction, the trial court's instructions that the lawyers' arguments were not evidence and that the jury must decide the case only on the basis of the evidence were sufficient to cure any error. See *Ackerman*, 257 Mich App at 449. On the whole, defendant was not deprived of a fair trial by the prosecutor's arguments. See *Rice (On Remand)*, 235 Mich App at 434-435.

Defendant also contends that the prosecutor denigrated defense witnesses by characterizing them as untruthful. Having reviewed the record, however, we conclude that the prosecutor's arguments regarding defendant's witnesses constituted fair commentary regarding their credibility; the prosecutor argued that the witnesses' testimony that they knew defendant well was not credible given their lack of knowledge about important aspects of defendant's life. See *People v Flanagan*, 129 Mich App 786, 795-796; 342 NW2d 609 (1983).

Defendant also asserts that his attorney rendered ineffective assistance by not objecting to the prosecutor's remarks. Although we conclude that this issue is not properly before this Court because defendant failed to raise it in his statement of the questions presented, see *People v Unger*, 278 Mich App 210, 262; 749 NW2d 272 (2008), defense counsel cannot be deemed ineffective for failing to raise meritless objections to the prosecutor's proper arguments. See *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

III. SUFFICIENCY OF THE EVIDENCE

Although defendant refers in his statement of the question presented for his final argument on appeal to both the sufficiency and the great weight of the evidence, it is clear that defendant is only taking issue with the sufficiency of the evidence supporting his conviction.[2] In evaluating the sufficiency of the evidence, we must view all of the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could find that the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992).

For the prosecution to prove CSC I in this case, it had to establish that defendant engaged in sexual penetration with another person who was under 13 years of age. See MCL 750.520b(1)(a); see also *People v Hammons*, 210 Mich App 554, 556-557; 534 NW2d 183 (1995).

[2] Defendant cites no law relating to a great-weight-of-the-evidence claim. Rather, he cites the standard of review and law relating to a sufficiency-of-the-evidence challenge and argues from that basis. Thus, to the extent defendant intended to raise a great-weight-of-the-evidence claim, he has abandoned it by failing to provide any legal authority to support it or otherwise elaborate on this claim. See *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004). Because defendant referred to the sufficiency of the evidence in his question presented and fully briefed and argued the issue on that basis, we therefore address this issue under the framework of a sufficiency-of-the-evidence claim.

After reviewing the trial evidence, we conclude that it was sufficient to support defendant's convictions. In essence, defendant asks this Court to reweigh the evidence and reassess the credibility of the witnesses. But we must defer to the jury's resolution of these matters and resolve any conflicting evidence in favor of the prosecution. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000); *People v Harrison*, 283 Mich App 374, 377-378; 768 NW2d 98 (2009).

The victim's testimony alone was enough to establish the elements of the offenses in this case. See *People v Szalma*, 487 Mich 708, 724; 790 NW2d 662 (2010), citing MCL 750.520h. According to the victim, when she was about seven years of age and defendant was babysitting her, he would tell her to pull down her pants and underwear and lay down on the floor, and then he would "lick" her "private part." She testified that he licked her "[i]n the middle" of her "private part," which she normally used to go to the bathroom. This occurred more than once and on "most of the days" over the course of the months that he babysat her. Defendant told her not to tell anyone. The victim similarly told the forensic interviewer that the incidents occurred every time defendant babysat her and "more than once" but that defendant "never did anything else." Although corroboration was unnecessary, the victim's mother gave a similar account of the abuse as told to her by the victim, and her description of how the victim eventually disclosed the abuse to her was nearly identical to the victim's testimony.[3]

Defendant also argues that the victim was unable to provide specific dates when the offenses occurred. "Time is not of the essence, nor is it a material element, in criminal sexual conduct cases involving a child victim." *People v Dobek*, 274 Mich App 58, 83; 732 NW2d 546 (2007). Nevertheless, both the amended information and the jury instructions specified that the offenses occurred in 2008 and 2009, and the testimony of the victim and her mother established that the sexual acts occurred during this time period.

Affirmed.

/s/ Jane M. Beckering
/s/ Kathleen Jansen
/s/ Michael J. Kelly

[3] We note that although defendant does not specifically argue that there was insufficient evidence of penetration, he appears to argue that no contact of any kind occurred. There was, however, sufficient evidence of sexual penetration. "Sexual penetration" includes "cunnilingus . . . or any other intrusion, however slight, of any part of a person's body . . . into the genital . . . openings of another person's body . . . ," MCL 750.520a(r), including the vagina or labia majora, *People v Lockett*, 295 Mich App 165, 187-188; 814 NW2d 295 (2012). The victim's testimony that defendant licked her "private part" "in the middle" where she urinated provided a sufficient basis for the jury to find that defendant performed cunnilingus on the victim. Moreover, the jury could reasonably find on the basis of this testimony that a part of defendant's body intruded to some extent into the victim's vagina or labia majora.