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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 13, 2026 10:05 AM
v	No. 374116 Wayne Circuit Court
ANTHONY GILCHRIST, Defendant-Appellant.	LC No. 24-000661-01-FH

Before: KOROBKIN, P.J., and RICK and MALDONADO, JJ.

PER CURIAM.

Defendant, Anthony Gilchrist, appeals by right following his jury-trial convictions on two counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(e) (sexual penetration while armed with a weapon or an implied weapon); one count of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(e) (sexual contact while armed with a weapon or an implied weapon); two counts of third-degree criminal sexual conduct (CSC-III), MCL 750.520d(1)(a) (sexual penetration with person from 13 to 15 years old); and one count of fourth-degree criminal sexual conduct (CSC-IV), MCL 750.520e(1)(a) (sexual contact with person from 13 to 15 years old). On appeal, defendant seeks relief on grounds of double jeopardy, insufficiency of the evidence, and the improper admission of hearsay evidence at trial. For the reasons stated in this opinion, we disagree with defendant's arguments and therefore affirm.

I. BACKGROUND AND FACTS

Witnesses at defendant's trial testified to the following facts. One afternoon in January 2024, when the victim, EW, was 13 years old, defendant was visiting the home of EW's father, whom defendant had known for about 15 years. EW's father, his then-girlfriend Tyrell Shade, and defendant conversed downstairs while EW, her younger sister, and her younger brother were upstairs. Defendant requested help with setting up or updating his iPhone, and EW came downstairs to render assistance. After EW worked on the phone, she returned upstairs. At some point thereafter, defendant indicated that he needed to use the restroom and was directed upstairs to the only bathroom in the home.

EW testified that defendant came upstairs and requested additional help with his phone. EW walked into the hallway to help defendant, and saw defendant sitting on, but not using, the toilet in the bathroom. EW stood in the bathroom doorway while she helped him. Defendant began asking EW questions that made her "a little uncomfortable," such as whether she was sexually active. Defendant then asked EW to take a picture with him on her phone, and they positioned themselves in front of the sink for a photo. Shortly after that, EW testified, defendant told her that he had a gun, pressed an object against her back, and told her "if you scream or try to do anything I will kill your family."

According to EW, defendant told her to turn around and grabbed her neck in a choking manner. Defendant then pulled his pants down and ordered EW "to suck his penis." EW testified that defendant's penis penetrated her mouth. Defendant next pulled down EW's pants and penetrated her vaginally with his penis. Defendant further asked EW to lift her shirt, and EW complied. Defendant also "made [EW] tongue kiss him."

Shade testified that she came upstairs and saw EW and defendant "just standing there." According to Shade, defendant was "fidgety," asked for a phone charger, and went downstairs. Then, Shade asked EW why she "look[ed] so dumbfounded" and what was wrong, and EW responded, "he touched me." Shade inquired further as to what EW meant, and EW "just started crying real hard." Shade testified that she then ran downstairs and told EW's father that defendant had touched EW, at which point a physical altercation broke out between defendant and the couple. After the altercation moved outside, Shade explained, police officers who happened to be passing by intervened and detained defendant upon being told by Shade that defendant had "just raped [her] daughter."

A jury ultimately found defendant guilty of the charged offenses described above. The trial court sentenced defendant to concurrent terms of 35 to 60 years' imprisonment for each CSC-I conviction, 10 to 20 years' imprisonment for CSC-II, 15 to 30 years' imprisonment for each CSC-III conviction, and 5 to 15 years' imprisonment for CSC-IV.

Defendant now appeals.

II. ANALYSIS

A. DOUBLE JEOPARDY

Defendant argues that his CSC-II and CSC-III convictions violated his constitutional protection against double jeopardy due to the overlap between those offenses and his CSC-I convictions. We disagree.

"A double-jeopardy challenge presents a question of law that we review de novo." *People v Herron*, 464 Mich 593, 599; 628 NW2d 528 (2001). "The United States and Michigan Constitutions protect a person from being twice placed in jeopardy for the same offense." *People v Nutt*, 469 Mich 565, 574; 677 NW2d 1 (2004), citing US Const, Am V; Const 1963, art 1, § 15. Our Supreme Court has explained that this "prohibition against double jeopardy provides three related protections: (1) it protects against a second prosecution for the same offense after acquittal; (2) it protects against a second prosecution for the same offense after conviction; and (3) it protects

against multiple punishments for the same offense." *Nutt*, 469 Mich at 574. Defendant's challenge pertains to the third of these protections, "which is referred to as the 'multiple punishments' strand of double jeopardy." *People v Fredell*, 516 Mich 1, 8; 33 NW3d 320 (2024).

Determining whether a defendant has been subjected to multiple punishments for the same offense entails a two-step inquiry. See *id.* at 9; *People v Garland*, 286 Mich App 1, 4-5; 777 NW2d 732 (2009). We first examine "the ordinary meaning of the statute" to see whether "the Legislature has clearly indicated its intent with regard to the permissibility of multiple punishments[.]" *Fredell*, 516 Mich at 9 (quotation marks and citation omitted). If the Legislature clearly evinces its intent "to prohibit multiple punishments, it will be a violation of the multiple punishments strand for a trial court to cumulatively punish a defendant for both offenses in a single trial." *Id.* (quotation marks and citations omitted). Correspondingly, "[w]here the Legislature clearly intends to impose such multiple punishments, there is no double jeopardy violation." *Garland*, 286 Mich App at 4. But if the Legislature's intent is not clear from the statutory text, then this Court proceeds to the second step of the inquiry: comparing the elements of the offenses at issue using the *Blockburger*[1] test. *Id.* at 4-5; *Fredell*, 516 Mich at 9. "Under the *Blockburger* test, if each offense 'requires proof of a fact which the other does not' then there is no violation of double jeopardy." *Garland*, 286 Mich App at 5, quoting *People v Smith*, 478 Mich 292, 311; 733 NW2d 351 (2007).

Employing this two-step inquiry, we find no double-jeopardy violation. Under the first step, this Court has explained that "[n]owhere in the CSC chapter, MCL 750.520 *et seq.*, does the Legislature clearly express its intention to impose multiple punishments." *Garland*, 286 Mich App at 5. We therefore proceed to the second step, applying the *Blockburger* test to compare the elements of the CSC-I and CSC-II offenses of which defendant was convicted, MCL 750.520b(1)(e) and MCL 750.520c(1)(e). See *id.* at 4-5; *Fredell*, 516 Mich at 9. The elements of CSC-I under MCL 750.520b(1)(e) are (1) engagement in sexual penetration with another person and (2) that the sexual penetration occur when "[t]he actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon." MCL 750.520b(1)(e). "Sexual penetration" is defined for purposes of CSC as "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required." MCL 750.520a(r). And the elements of CSC-II under MCL 750.520c(1)(e) are (1) engagement in sexual contact with another person and (2) that the sexual contact occur when "[t]he actor is armed with a weapon, or any article used or fashioned in a manner to lead a person to reasonably believe it to be a weapon." MCL 750.520c(1)(e). "Sexual contact," in turn, is defined to include

> the intentional touching of the victim's or actor's intimate parts[2] or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as being for

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[1] *Blockburger v United States*, 284 US 299; 52 S Ct 180; 76 L Ed 306 (1932).

[2] The term "[i]ntimate parts" is defined to "include[] the primary genital area, groin, inner thigh, buttock, or breast of a human being." MCL 750.520a(f).

the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner for:

(*i*) Revenge.

(*ii*) To inflict humiliation.

(*iii*) Out of anger. [MCL 750.520a(q).]

Hence, as this Court has explained, unlike CSC-II, CSC-I requires sexual penetration, and unlike CSC-I, CSC-II requires sexual contact and contains an intent requirement. *People v Duenaz*, 306 Mich App 85, 107; 854 NW2d 531 (2014). More specifically, "the Legislature's definitions of 'sexual penetration' and 'sexual contact,' " differ such that "CSC-I and CSC-II each require proof of a fact that the other does not[,]" and "CSC-II requires that "sexual contact" be done for a 'sexual purpose,' an element not included in CSC-I." *Id.*; see also *People v Lemons*, 454 Mich 234, 253-254; 562 NW2d 447 (1997) (explaining that "because CSC[-]II requires proof of an intent not required by CSC[-]I—that [a] defendant intended to seek sexual arousal or gratification—CSC[-]II is a cognate lesser offense of CSC[-]I"). Therefore, because each offense contains an element the other does not, CSC-I and CSC-II are not the same offense, and "conviction and punishment for both CSC-I and CSC-II does not violate double jeopardy." *Duenaz*, 306 Mich App at 107; see *Garland*, 286 Mich App at 5.

Applying the *Blockburger* test to compare the elements of the CSC-I and CSC-III offenses of which defendant was convicted, MCL 750.520b(1)(e) and MCL 750.520d(1)(a), yields the same result. See *Garland*, 286 Mich App at 4-5; *Fredell*, 516 Mich at 9. Again, the elements of CSC-I under MCL 750.520b(1)(e) are: (1) engagement in sexual penetration with another person and (2) that the sexual penetration occur when "[t]he actor is armed with a weapon or any article used or fashioned in a manner to lead the victim to reasonably believe it to be a weapon." MCL 750.520b(1)(e). And the elements of CSC-III under MCL 750.520d(1)(a) are (1) engagement in sexual penetration with another person and (2) that the "other person is at least 13 years of age and under 16 years of age." MCL 750.520d(1)(a). Thus, although both CSC-I and CSC-III require engagement in sexual penetration, unlike CSC-III, CSC-I under MCL 750.520b(1)(e) requires the use or implication of a weapon, and unlike CSC-I, CSC-III under MCL 750.520d(1)(a) requires that the victim be between the 13 and 15 years old. It is possible to engage in sexual penetration with a person who is within the age range provided in MCL 750.520d(1)(a) without the use or implied use of a weapon for CSC-III, just as it is possible to engage in sexual penetration with a person of any age with the use or implied use of a weapon for CSC-I, MCL 750.520b(1)(e). Hence, because CSC-I under MCL 750.520b(1)(e) and CSC-III under MCL 750.520d(1)(a) each contains an element the other does not, they are not the same offense, and defendant may be punished for both. See *Garland*, 286 Mich App at 5.

We therefore conclude that CSC-II and CSC-III differ individually from CSC-I such that defendant could be convicted and sentenced for these separate offenses without his constitutional protection against double jeopardy being violated. Defendant is thus not entitled to relief on his double-jeopardy claim.

B. SUFFICIENCY OF THE EVIDENCE

Defendant also contends that his CSC-II and CSC-IV convictions must be set aside because, excluding the evidence of the sexual penetrations used to establish his CSC-I and CSC-III offenses, there was insufficient evidence to support a finding that he touched an intimate part of EW's body. Likewise relying on the evidence presented at trial aside from the sexual penetrations, the prosecution agrees with defendant. We disagree with both parties and conclude that sufficient evidence supported defendant's CSC-II and CSC-IV convictions.

This Court reviews de novo whether the evidence was sufficient to support a defendant's conviction. *People v Helmer*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 369063); slip op at 10 (citation omitted). "To determine whether the prosecut[ion] has presented sufficient evidence to sustain a conviction," we "review the evidence in the light most favorable to the prosecut[ion] and determine whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt." *People v Bailey*, 310 Mich App 703, 713; 873 NW2d 855 (2015) (quotation marks and citation omitted). Our standard of review in this task is deferential, as we must "draw all reasonable inferences and make credibility choices in support of the jury verdict." *Helmer*, ___ Mich App at ___; slip op at 10 (quotation marks and citation omitted). Moreover, "[c]ircumstantial evidence and the reasonable inferences that arise from that evidence can constitute satisfactory proof of the elements of the crime." *Id.* at ___; slip op at 10 (quotation marks and citation omitted).

As instructed by the trial court, to find defendant guilty of CSC-II under MCL 750.520c(1)(e), the jury had to find beyond a reasonable doubt that (1) "defendant intentionally touched [EW's] genital area, inner thigh, buttock, breast or clothing covering those areas"; (2) "that this was done for sexual purposes or could reasonably be construed as having been done for a sexual purpose"; and (3) "defendant was armed with . . . any object used or fashioned in a manner to lead [EW] to reasonably believe that it was a weapon." And to find defendant guilty of CSC-IV under MCL 750.520e(1)(a), the jury was instructed that it needed to find beyond a reasonable doubt that (1) "defendant touched [EW's] genital area, groin, inner thigh, buttock, or breast, or the clothing covering that area"; (2) "that this touching was done for sexual purposes or it could reasonably be construed as being done for sexual purposes" and (3) that EW was 13, 14, or 15 years old at the time. Defendant does not dispute that, for purposes of CSC-II, the prosecution presented sufficient evidence that "defendant was armed with . . . any object used or fashioned in a manner to lead [EW] to reasonably believe that it was a weapon" or that, for purposes of CSC-IV, there was sufficient evidence for the jury to find that EW was 13, 14, or 15 years old at the time. Nor does defendant argue that, for purposes of both CSC-II and CSC-IV, there was insufficient evidence that defendant's acts against EW were "for sexual purposes" or could reasonably be construed as being done for a sexual purpose. Rather, defendant contends that there was insufficient evidence that he touched EW's genital area, groin, inner thigh, buttock, or breast, or clothing covering those areas, as relevant to both CSC-II and CSC-IV. See MCL 750.520a(f) (defining "[i]ntimate parts" to include these parts of the body for purposes of CSC offenses). More specifically, defendant argues that aside from the evidence of his sexual penetrations of EW as necessary for his CSC-I and CSC-III convictions, no evidence presented at trial could support a finding that he touched EW's genital area, groin, inner thigh, buttock, or breast, or clothing covering those body parts.

A rational juror could find beyond a reasonable doubt that defendant touched EW's genital area. See *Helmer*, ___ Mich App at ___; slip op at 10. Although the parties presume, without citation to legal authority, that evidence of defendant's acts of sexual penetration should be disregarded when considering whether there is sufficient evidence to support his CSC-II or CSC-IV convictions, we have found no caselaw support for this proposition. To the contrary, a single penetration may support multiple CSC convictions of varying grades as long as each CSC offense of which a defendant is convicted has an element that the other does not. See *Garland*, 286 Mich App at 5-7; see also, e.g., *Duenaz*, 306 Mich App at 105-107 (stating that "[t]he same evidence that supported [the] defendant's convictions of CSC-I," which were based on vaginal and anal penetration, "would also support, on the facts of this case, conviction for CSC-II"); *People v Eberline*, unpublished per curiam opinion of the Court of Appeals, issued June 9, 2026 (Docket No. 371674), p 4 (noting that a single act "could support a conviction of both CSC-I and CSC-II without violating double jeopardy").[3] And in the present case, we have already concluded that defendant's double-jeopardy challenge to his CSC-II and CSC-III convictions fails, and defendant levies no additional argument that any of the CSC offenses of which he was convicted have elements entirely shared by any of the others. Thus, although the evidence of sexual penetration also supported defendant's CSC-I and CSC-III convictions, contrary to both parties' positions, we find no impediment to considering that evidence in determining whether sufficient evidence supports defendant's CSC-II and CSC-IV convictions.[4]

Reviewing that evidence here, EW's testimony that defendant inserted his penis into her vagina supported a finding for purposes of CSC-II and CSC-IV that, via vaginal penetration, defendant touched the victim's genital area. Cf. *People v Garrow*, 99 Mich App 834, 839; 298 NW2d 627 (1980) (explaining that "in most cases, [CSC-II] is a factually included offense within [CSC-I]"). Because whether defendant committed a qualifying touching is the only element disputed by defendant for his CSC-II and CSC-IV convictions, we accordingly conclude that sufficient evidence supported those convictions. See *Helmer*, ___ Mich App at ___; slip op at 10. Defendant therefore is not entitled to relief on his sufficiency-of-the-evidence claim.

C. HEARSAY

Defendant lastly argues that the admission into evidence of Shade's testimony that EW stated "he touched me" was plain error that warrants setting aside all his convictions. We disagree.

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[3] "Unpublished opinions of this Court are not binding but may be considered for their persuasive value." *People v Urbanski*, 348 Mich App 90, 110 n 6; 17 NW3d 430 (2023).

[4] We recognize that it may be somewhat unusual to affirm a conviction when the prosecution agrees that it should be vacated. However, "[i]t has long been recognized that parties may not stipulate to a question of law which is contrary to the actual state of the law . . . ." *People v Wolfe*, 156 Mich App 225, 230; 401 NW2d 283 (1986); see also *Kimmelman v Heather Downs Mgt Ltd*, 278 Mich App 569, 576; 753 NW2d 265 (2008) (explaining that this Court is "not bound by . . . parties' stipulations on a point of law"). Therefore, although we respect the fact that the parties agree on this issue, we cannot vacate a valid conviction without legal grounds for doing so, and we see none here.

"Interpretation of the rules of evidence is an issue of law that this Court reviews de novo." *People v Hawkins*, 349 Mich App 271, 274; 27 NW3d 641 (2023). Generally speaking, this Court reviews a trial court's decision to admit evidence for an abuse of discretion. *People v Thorpe*, 504 Mich 230, 251; 934 NW2d 693 (2019). And if there are any preliminary questions of fact relating to the admissibility of evidence, they are to be determined by the trial court in the first instance and are reviewed by us for clear error. See *People v Burns*, 494 Mich 104, 117 n 39, 119; 832 NW2d 738 (2013); *People v Barrera*, 451 Mich 261, 269; 547 NW2d 280 (1996). However, because defendant did not object at trial to the admission of the contested statement, his claim is considered unpreserved. See *People v Swenor*, 336 Mich App 550, 562; 971 NW2d 33 (2021) ("To preserve an issue, a party must raise it before the trial court."). We therefore review the admission of the statement for "plain error." *People v Houston*, 261 Mich App 463, 466; 683 NW2d 192 (2004). "To succeed under the plain-error standard, a defendant bears the burden of persuasion and must show that (1) error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected a substantial right of the defendant." *People v Lillis*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 372637); slip op at 3 (citation modified). "Reversal is then warranted only if 'the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity, or public reputation of judicial proceedings.' " *Id.* at ___; slip op at 3, quoting *People v Pipes*, 475 Mich 267, 279; 715 NW2d 290 (2006).

Hearsay is "a statement that[] the declarant does not make while testifying at the current trial or hearing[] and [that] a party offers in evidence to prove the truth of the matter asserted in the statement." MRE 801(c). Hearsay is *generally* inadmissible, MRE 802, but there are exceptions, MRE 803. Under the excited-utterance exception, the rule against hearsay does not exclude "[a] statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused." MRE 803(2). To qualify for the excited-utterance exception, a statement must: (1) "arise out of a startling occasion"; (2) "be made before there has been time to contrive and misrepresent; and" (3) "relate to the circumstances of the startling occasion." *People v Skippergosh*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 364127); slip op at 7 (quotation marks and citation omitted). As to the second requirement, the relevant inquiry is not whether the declarant has had time to fabricate a statement, but rather "whether the declarant is so overwhelmed that she lacks the capacity to fabricate." *People v McLaughlin*, 258 Mich App 635, 659-660; 672 NW2d 860 (2003).

In this case, Shade testified that after coming upstairs and seeing that defendant was "fidgety," Shade asked EW why she "look[ed] so dumbfounded" and asked what was wrong. In response, EW stated, "he touched me." When Shade inquired further as to what EW meant, EW "just started crying real hard." EW also testified as to this encounter with Shade. EW explained that when Shade came upstairs, defendant told Shade that he had been asking EW for a phone charger, but Shade "knew something was wrong and [that defendant] was lying" from the look on EW's face. EW said that when defendant went downstairs, Shade asked her what defendant had done and she "just looked at [Shade] and started crying." And EW's sister recounted that, based on EW's facial expressions, she could tell that EW was "[k]ind of scared" following the assault, and that when Shade asked EW what had happened, EW "started crying and said she had got raped."

This testimony establishes that there was no plain error in the admission of EW's statement, "he touched me." To prevail on this unpreserved claim under the plain-error standard of review, defendant must show that it was "clear or obvious" that the requirements of the excited-utterance exception were not met. *Lillis*, ___ Mich App at ___; slip op at 3. That is far from the case here. First, EW's statement clearly "arose out of a startling occasion," namely, the sexual assault to which she was subjected, as EW spoke so soon after it that she was "[k]ind of scared," "dumbfounded," and crying. *Skippergosh*, ___ Mich App at ___; slip op at 7 (quotation marks and citation omitted); see *People v Smith*, 456 Mich 543, 552; 581 NW2d 654 (1998) (describing a sexual assault as a startling event); *McLaughlin*, 258 Mich App at 660 (concluding that the victim was still under the influence of emotional stress caused by being raped at the time she told police that the defendant had assaulted her when she "appeared extremely upset" and "was having trouble breathing and speaking"). Second, it was far from clear or obvious that EW had "time to contrive and misrepresent," *Skippergosh*, ___ Mich App at ___; slip op at 7 (quotation marks and citation omitted), as the evidence indicated that EW was "so overwhelmed" as to "lack[] the capacity to fabricate," given her palpable emotional state and tears, *McLaughlin*, 258 Mich App at 660; see *People v Green*, 313 Mich App 526, 536; 884 NW2d 838 (2015) (concluding that there was "no time to contrive and misrepresent [the defendant's] actions" regarding his sexual assault of the victim when the victim's statements were made "within minutes" of defendant leaving the scene and the victim "was very upset and crying"). Third, the statement "he touched me" undoubtedly "relate[s] to the circumstances of the startling occasion," because it served as an account of what had happened during the assault. See *Skippergosh*, ___ Mich App at ___; slip op at 7 (quotation marks and citation omitted); *Smith*, 456 Mich at 552. Accordingly, because it is not "clear or obvious" that the contested statement "he touched me" failed to satisfy the three requirements to be an excited utterance under MRE 803(2), the trial court did not commit plain error in admitting it. See *Skippergosh*, ___ Mich App at ___; slip op at 7; *Hawkins*, 349 Mich App at 274; *Lillis*, ___ Mich App at ___; slip op at 3; *Houston*, 261 Mich App at 466.

III. CONCLUSION

For the reasons detailed in this opinion, we conclude that defendant's CSC-II and CSC-III convictions did not violate his constitutional protection against double jeopardy, that sufficient evidence supported defendant's CSC-II and CSC-IV convictions, and that the trial court did not plainly err in admitting into evidence Shade's testimony that EW stated "he touched me." The judgment of the trial court is therefore affirmed.

/s/ Daniel S. Korobkin
/s/ Michelle M. Rick
/s/ Allie Greenleaf Maldonado