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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v JIMMY LEE FULLER, Defendant-Appellant.	FOR PUBLICATION November 06, 2026 3:42 PM No. 372013 Saginaw Circuit Court LC No. 22-048921-FC

Before: BORRELLO, P.J., and BAZZI and LIEVENSE, JJ.

LIEVENSE, J.

Defendant, Jimmy Lee Fuller, appeals as of right his jury trial convictions of six counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(2)(b) (person under 13, defendant 17 years of age or older), and accosting a child for an immoral purpose, MCL 750.145a. Defendant was sentenced to concurrent terms of life imprisonment without parole for each CSC-I conviction, and 29 to 48 months' imprisonment for the accosting a child for an immoral purpose conviction, with credit for 842 days served. Defendant raises evidentiary and constitutional challenges to his convictions and sentences. For the reasons set forth in this opinion, we affirm.

I. FACTUAL BACKGROUND

A. OFFENSE CONDUCT

In July of 2020, the victim in this case was 11 years old and living with her younger brother and their mother, Tonya Ledesma, Ledesma's boyfriend, and the victim's great-grandfather at their home in Saginaw County. Defendant is Ledesma's boyfriend's cousin, and he began living in a camper on the family's property in July 2020 because "[h]e didn't have a place to go." At the

time, defendant was 38 years old. While he lived in the camper, defendant had full access to the home, would sometimes sleep in the home, and was often left alone with the victim and her brother.

The victim turned 12 in the fall of 2020. In December 2020, the victim received a cell phone as a Christmas gift. Shortly thereafter, defendant suggested the victim download Snapchat[1] so they could communicate privately; defendant created a user profile for the victim and befriended her on the app. The victim initially saved defendant's name in her Snapchat contacts as "Jimmy," but eventually changed his name to "Baby" with two red hearts. At trial, the victim described their relationship on Snapchat as going "from casual to more like we were in a relationship to more sexual" in 2021. For example, defendant sent the victim pictures of himself and of his penis, and he asked her to send nude pictures of herself to him. The two also talked on Snapchat about possibly having sex. Eventually, before Easter of 2021, the relationship progressed to multiple sexual encounters in the victim's bedroom, the bathroom, in the camper outside, and at the victim's grandfather's house in Genesee County. The victim's younger brother testified that he saw defendant and the victim engage in vaginal and oral sex in the camper and in the bathroom multiple times. The victim told her brother that defendant and she were in a relationship.

In August 2021, Ledesma heard about a possible relationship between defendant and the victim from defendant's sister. Ledesma spoke with the victim's brother, and he disclosed the sexual acts he witnessed, and that defendant and the victim were dating. Ledesma talked to the victim, and she eventually confirmed what her brother reported. Ledesma called 911, an ambulance took the victim to the hospital on August 3, 2021, and the police were notified.

B. PRETRIAL PROCEEDINGS

Defendant was charged with six counts of CSC-I (counts 1-6) and one count of accosting a child for an immoral purpose (count 7) for the conduct that occurred from about January to August 2021, arrested on November 7, 2021, and arraigned in the district court on November 8, 2021. Defendant waived a formal reading of the charges and stood mute, and a plea of not guilty was entered. Because of defendant's 2002 guilty plea conviction of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(a), in Alcona County, he was held without bond.

At a pre-exam conference on November 17, 2021, defendant was re-referred to the Office of Assigned Counsel after previously having been denied assigned counsel for failure to complete the required forms. Defendant again requested an assigned attorney, and the trial court instructed defendant to completely fill out the required information. The court then instructed the prosecutor to call off the witnesses scheduled for November 22, 2021, so an attorney could be appointed. In delaying the pre-exam conference, the court noted that defendant's initial request for assigned counsel was denied because of his "failure to completely fill-out the requested information," but a delay was necessary because the court "would like to have an attorney appointed for [defendant]."

[1] "Snapchat is an application for mobile phones used to share text messages, photographs, and other images among a defined group of 'real friends.' " *In re JP*, 330 Mich App 1, 3; 944 NW2d 422 (2019). "One feature of the application vaporizes the messages after a few seconds unless a recipient deliberately saves them." *Id*. at 4.

Another pre-exam conference was held on November 22, 2021, where the defense and the prosecution both requested an in-person exam. An in-person exam was scheduled for December 21, 2021. The hearing was adjourned, and the register of actions does not state why, however, the prosecution's brief on appeal states that it was due to a COVID-19 surge in the local jail at the time, all hearings were held virtually, and the defense wanted an in-person hearing.[2] The court held an in-person preliminary exam on February 1, 2022, and defendant was bound over to the circuit court to stand trial.

The register of actions reflects that nothing happened in this case until September 8, 2022, and again on November 7, 2022, when trial notices purportedly were sent to the parties informing them that trial was set for January 24, 2023. When the trial date arrived, the prosecutor informed the court that she was not ready to proceed because she had not received notice that trial was scheduled for that date. Defense counsel indicated he and defendant were prepared to proceed and objected to an adjournment, arguing the judge's clerk sent out an e-mail the week prior stating that the matter was set for trial. The trial court granted the prosecution's request to adjourn and indicated on the record that a new electronic case management system had been implemented in the courthouse that was "horrendous" and "not operating as it should," and had failed to properly provide notice to parties in other cases. The trial court stated "I understand the defendant is in custody. I will get it set for trial as soon as possible."

The next status conference was set for and occurred on February 6, 2023, where the prosecution informed the trial court of its progress on the case and that it would not be making defendant a plea offer to anything other than CSC-I which, given defendant's criminal history, would require a sentence of life without parole under MCL 750.520b(2)(c). When defendant expressed his frustration with the prosecution's delay in being ready for trial, the court reiterated there were issues with the faulty electronic case management system, that it was no one's fault, and that it would get defendant's trial date set as soon as possible. However, the trial court warned "[t]he prosecutor better get their notices filed, or their motions, whatever it is they're going to file, because you've got a time requirement that's related to that."

In a letter dated March 10, 2023, defendant asked the trial court to set his trial for the first available date and complained that he had been ready for trial since September 2022 and the prosecution had postponed trial twice. The letter was filed with the trial court on March 22, 2023.

Meanwhile, on March 17, 2023, the prosecution filed a motion to admit other-acts evidence at trial pursuant to MCL 768.27a, or alternatively, MRE 404(B). The motion sought to introduce evidence (1) that defendant sent the victim photos of his penis; (2) of alleged sexual acts that occurred at the victim's grandfather's house in Genesee County; and (3) of defendant's 2002 CSC-II conviction in Alcona County.

On June 9, 2023, the trial court sent notice to the parties setting trial for September 12, 2023.

[2] The prosecution conceded at oral argument that, other than the request for an in-person exam, the record contains no indication that the adjournment was attributable to COVID-19.

The trial court heard arguments on the motion to admit other-acts evidence on August 7, 2023. Regarding the prior conviction, the trial court sought information about when the acts occurred that led to the conviction, the age of the victim and defendant at the time of the offense, and the relationship of the victim to defendant. The prosecution clarified that the acts occurred around 2000 (meaning defendant was 17-18 years old, since he turned 18 in April 2000) and that defendant and the victim were cousins, but it was unsure of the prior victim's exact age other than that he was under 13 years old, and that defendant was an adult, at the time of the offense. Defense counsel argued the prior conviction was more than 20 years old and that admitting it would be more prejudicial than probative because it would only demonstrate defendant's propensity to commit such acts. The trial court stated that a prior conviction is allowed for propensity purposes under MCL 768.27a but agreed that the 20 years since the prior conviction would weigh in favor of the evidence being unfairly prejudicial. The prosecution noted, however, that defendant was incarcerated for 12 years after the 2002 conviction, which narrowed the temporal gap.

The trial court ruled that all the evidence the prosecution sought to introduce was admissible under MCL 768.27a. After the trial court admitted the other-acts evidence, the prosecution filed its witness list in late August 2023.

On September 11, 2023, the day before the scheduled trial, the trial court reset the trial for November 14, 2023, without explanation. While the register of actions does not state what happened, during that same period defendant wrote his attorney a series of letters to, in defense counsel's words, "get the F off this case." According to defense counsel, the letters accused him of negligence and favoring the prosecution. On September 14, 2023, defense counsel filed a motion to withdraw as counsel, citing a breakdown of the attorney-client relationship. On October 2, 2023, the trial court granted the motion, and the prosecution requested that the matter be set for a status conference in advance of the November trial date given new defense counsel would be assigned. A pretrial hearing was scheduled for October 26, 2023.

On October 10, 2023, newly appointed defense counsel filed an appearance and demand for speedy trial. On October 19, 2023, the prosecution filed a notice of intent to admit other-acts evidence to further address the alleged sexual acts that occurred between defendant and the victim in Genesee County; specifically, that the victim testified at the preliminary hearing that the first time defendant and her engaged in sexual acts was on January 6, 2021, at the victim's grandfather's house. The notice stated that this uncharged act was relevant to show defendant's propensity to commit sex crimes, support the victim's credibility, and was similar to the charged acts.

At the pretrial hearing on October 26, 2023, the November trial date was reset to December 19, 2023, after an off the record conference with the parties. On November 28, 2023, the trial court reset the trial date to January 9, 2024, without explanation.

From the time he was arrested to the first day of trial, defendant spent 793 days (approximately 26 months) in jail.

C. TRIAL

Trial began on January 9, 2024, with jury selection and preliminary instructions. On January 10, the jury heard from Ledesma, the victim, the victim's brother, the father of the victim

in the earlier CSC case (the father was defendant's cousin), the doctor who examined the victim at the hospital, and the investigating officer on the case.

The victim testified that she saved "most of" the Snapchat messages between her and defendant by clicking on each message to save it in their Snapchat message chain. The prosecution offered the Snapchat messages as Exhibit 10, a 46-page document of pictures of the victim's cellphone showing saved Snapchat messages. During her testimony, the victim went through the messages and testified they were a true and accurate representation of the messages she saved. The messages showed the victim sent defendant pictures of her face, and defendant sent her pictures of his face and of his penis. After the victim had already testified about the messages, defense counsel objected to admitting them on foundation grounds. The trial court ruled that "[b]ased on the testimony of the [victim] and the content of the Snapchat as represented by the Prosecution I will overrule the objection . . . . Exhibit 10 will be admitted." The victim then also testified that defendant and the victim engaged in multiple instances of sexual penetration (penis to vagina, penis to mouth, mouth to vagina), that each of these penetrations happened multiple times, and the victim and defendant "had sex" "[m]ore than 10" times.

Also, the prior victim's father testified that his son was the victim in the 2002 case, and his son was almost four years old at the time. He further testified that he made a police report on July 1, 2001, and that at the time of the events leading to the earlier conviction, defendant had to have been 18 because "he worked for John's Home Maintenance. He had to be an adult." A redacted copy of the judgment of sentence for the 2002 conviction was admitted as Exhibit 13.

The pediatric emergency medicine physician who examined the victim when she presented to the hospital on August 3, 2021, for a sexual assault examination testified as an expert in pediatric medicine, and explained the victim was outside the 72 to 96 hour window where a sexual assault examination would yield DNA evidence, so she did not conduct a full examination. Finally, the jury heard the police officer who investigated the case, found defendant's prior convictions of CSC, and recovered the Snapchat messages. On cross examination, the officer testified he did not examine defendant's phone to verify whether the Snapchat messages came from defendant.

After the prosecution rested, defendant chose not to testify, and the defense rested. The next day the jury found defendant guilty of all charges.

D. SENTENCING AND POST-CONVICTION PROCEEDINGS

On February 27, 2024, defendant was sentenced to concurrent terms of life imprisonment without parole (LWOP) for each CSC-I conviction under MCL 750.520b(2)(c), and 29 to 48 months' imprisonment for the accosting a child for an immoral purpose conviction, with credit for 842 days served.

On April 4, 2025, defendant filed a motion to correct an invalid sentence, arguing his mandatory LWOP sentence for these convictions, which were predicated on a prior offense that defendant committed when he was about 18 years old, violated the Michigan Constitution's prohibition against cruel or unusual punishment. Defendant argued that our Supreme Court's rationale in *People v Parks*, 510 Mich 225; 987 NW2d 161 (2022), that a defendant cannot be sentenced to LWOP for an offense committed at the age of 18, means that a conviction for conduct

at around that same age cannot later be the basis for imposing a mandatory LWOP sentence for a CSC offense. He also argued that imposing an LWOP sentence based on a prior qualifying CSC conviction that was not proven beyond a reasonable doubt nor found by a jury violated the Fifth and Sixth Amendments to the United States Constitution. The trial court heard oral argument from both parties but ultimately denied the motion.

Defendant now appeals.

II. RIGHT TO SPEEDY TRIAL

Defendant first argues that the more than two-year delay before conducting a jury trial violated his right to a speedy trial under the Michigan and United States Constitutions. We disagree.

A. LEGAL STANDARD

As an initial matter, the parties disagree about whether this issue is preserved for appellate review. "A defendant must make a formal demand on the record to preserve a speedy trial issue for appeal." *People v Cain*, 238 Mich App 95, 111; 605 NW2d 28 (1999) (quotation marks and citation omitted). We conclude that defendant preserved this issue. Defendant expressed his frustration with the prosecution's delay in being ready for trial on the record at a February 2023 status conference hearing. Defendant also wrote a letter to the trial court in March 2023 asking the court to schedule his trial for the first available date and complained that he had been ready for trial since September 2022, but the prosecution postponed trial twice. Finally, defendant, through counsel, demanded a speedy trial pursuant to the state and federal Constitutions in a formal request filed with the court on October 10, 2023. And this is not a situation where the failure to raise the speedy trial issue in a motion prevented the creation of a record that adequately explains the reasons for delay. Preserved constitutional issues are reviewed de novo and factual findings are reviewed for clear error. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006). Additionally, we "must determine whether any error was harmless beyond a reasonable doubt." *People v Waclawski*, 286 Mich App 634, 664; 780 NW2d 321 (2009). "Violation of the constitutional right to a speedy trial requires dismissal of the charge with prejudice." *Id*. at 664-665, citing MCR 6.004(A).

The United States and Michigan Constitutions guarantee a defendant the right to a speedy trial. US Const, Am VI; Const 1963, art 1, § 16. See also MCL 768.1. "Whenever the defendant's constitutional right to a speedy trial is violated, the defendant is entitled to dismissal of the charge with prejudice." MCR 6.004(A). In *Barker v Wingo*, 407 US 514, 530; 92 S Ct 2182; 33 L Ed 2d 101 (1972), the United States Supreme Court identified four factors to assist in determining whether a violation of the right to a speedy trial exists: "(1) length of delay, (2) the reason for the delay, (3) the defendant's assertion of his right, and (4) prejudice to the defendant." These factors were adopted by the Michigan Supreme Court in *People v Grimmett*, 388 Mich 590, 606; 202 NW2d 278 (1972), overruled on other grounds by *People v White*, 390 Mich 245, 257; 212 NW2d 222 (1973); and again in *Williams*, 475 Mich at 261-262. While defendant asks that we apply our Supreme Court's pre-*Barker* caselaw discussing the right to a speedy trial under our Constitution in *Hicks v Boyne*, 236 Mich 689; 211 NW 35 (1926), we decline to do so because we are bound by *Williams*, 475 Mich at 261-262.

B. LENGTH OF DELAY

"If the total delay, which runs from the date of the defendant's arrest until the time that trial commences, is under 18 months, then the burden is on the defendant to show that he or she suffered prejudice." *Waclawski*, 286 Mich App at 665 (citations omitted). But "[a] delay of more than eighteen months is presumed to be prejudicial and the burden is on the prosecution to prove lack of prejudice to the defendant." *People v Wickam*, 200 Mich App 106, 109; 503 NW2d 701 (1993). The first *Barker* factor favors defendant, as he was incarcerated for approximately 26 months between his arrest and trial and thus the prosecution bears the burden to prove a lack of prejudice to defendant. *Wickam*, 200 Mich App at 109.

C. REASONS FOR DELAY

Under the second *Barker* factor, when "assessing the reasons for delay, this Court must examine whether each period of delay is attributable to the defendant or the prosecution." *Waclawski*, 286 Mich App at 666. Delays that are unexplained, as well as delays caused by docket congestion, should be attributed to the prosecution. *Id*. However, although "delays inherent in the court system," such as docket congestion "are technically attributable to the prosecution, they are given a neutral tint and are assigned only minimal weight in determining whether a defendant was denied a speedy trial." *Williams*, 475 Mich at 263 (quotation marks and citations omitted). "[D]elays caused by the COVID-19 pandemic are not attributable to the prosecution for purposes of a speedy-trial claim." *People v Smith*, 351 Mich App 1, 14; 34 NW3d 593 (2024).

The first delay to consider here was in conducting a preliminary exam (about 73 days). Defendant was arrested November 7, 2021, and the preliminary exam (first set for November 22) was not completed until February 1, 2022. A pre-exam conference was delayed from November 17 to November 22, so that defendant could again request to have counsel appointed, due to his failure to fill out all the required forms for appointed counsel. The court then scheduled an in-person preliminary exam on December 21, 2021, after both defendant and the prosecution requested an in-person hearing. The December 21 hearing was then adjourned until February 1, 2022, without explanation on the record. Defendant's failure to properly fill out the paperwork for assigned counsel necessitated the delay from November 22, 2021 to December 21, 2021 and thus is charged against defendant. The record is silent, however, as to the nature of the delay from December 21, 2021 to February 1, 2022, and without a record as to why it was delayed, we attribute this 42-day delay to the prosecution, but only minimally so. *Williams*, 475 Mich at 263; *Smith*, 351 Mich App at 10. While the prosecution argues in its brief that the delay was due to the COVID-19 surge in the local jail, because the record does not actually reflect why the December 21, 2021 exam was delayed, we decline to consider that explanation. We note that had the record supported the cause of the delay being COVID-19, then the delay would not be attributable to the prosecution for purposes of a speedy-trial claim. *Smith*, 351 Mich App at 10.

The second delay to consider is what happened from February 1, 2022, to January 24, 2023 (about 356 days). After months of no activity, trial notices were supposedly sent to the parties on in September and November 2022, setting trial for January 24, 2023, but because of the court's faulty electronic docket management system it did not reach the prosecution. That 356 day delay, therefore, is explainable and not attributable to the prosecution. *Waclawski*, 286 Mich App at 666.

The trial court was correct that this mistake was no one's fault and acknowledged the same failure to notify had occurred in other cases and was "horrendous." Faulty electronic docket management cannot be considered inherent in the court system such that it weighs in defendant's favor or against the prosecution for purposes of the second *Barker* factor.

Third, after the trial court postponed the January 2023 trial but did not immediately set a new trial date, there were several delays and adjournments, mostly related to the trial court's consideration of the prosecution's subsequently-filed motion to admit other-acts evidence. At a status conference on February 6, 2023, the trial court alerted the prosecution to promptly file any pretrial motions. It filed the motion to admit other acts evidence on March 17, 2023. After the motion was fully briefed, on June 9 the trial court set trial for September 12, 2023, and then on August 7, 2023, well before the September trial, the trial court held a hearing and issued a written order granting the motion. Thus, the delay from January 24 to September 12, 2023 (about 231 days) is explained by pretrial motion practice and not attributable to the prosecution. *Waclawski*, 256 Mich App at 666.

The fourth delay is the adjournment of the trial date set from September 12, 2023, first to later in 2023 and eventually January 9, 2024 (about 120 days). Although the register of actions does not state why the court issued a new trial notice on September 11, defense counsel filed a motion to withdraw from the case on September 14, 2023, after defendant wrote to him to "get the F off the case." After new defense counsel was appointed, he naturally needed more time to prepare for trial, and trial was adjourned to December 19, 2023. The trial began on January 9, 2024; defendant did not contest this later adjournment. The approximately 120 day delay between September 12, 2023, and January 9, 2024, is attributable to defendant getting new counsel.

This summary reveals that the prosecution alone, rather than being held responsible for court action or inaction, was responsible for comparatively little of the delay, and defendant bears responsibility for some delay as well. Thus, the second *Barker* factor weighs against defendant. See *Waclawski*, 286 Mich App at 666-667 (where the defendant was responsible for more days of delay than the prosecutor, the second *Barker* factor weighed against the defendant).

D. ASSERTION OF RIGHT

Next, we consider whether and how defendant asserted his right to a speedy trial. *Barker*, 407 US at 531. "The more serious the deprivation, the more likely a defendant is to complain. The defendant's assertion of his speedy trial right, then, is entitled to strong evidentiary weight in determining whether the defendant is being deprived of the right." *Id*. at 531-532.

As stated above, although defendant complained of a delay on the record in February 2023 and in a letter to the court in March 2023, he did not file a motion for a speedy trial or seek any pre-trial relief from the court. Moreover, defendant fired his attorney in September 2023, right before trial was to begin, thereby delaying trial for about another 120 days. Thus, we do not consider defendant's early 2023 complaints alone as this factor weighing in his favor. Ultimately, in September 2023 after 22 months in jail, defendant was willing to delay trial because he was dissatisfied with counsel. So although defendant complained of a delay, the third *Barker* factor weighs in favor of the prosecution and against defendant.

E. LACK OF PREJUDICE

Finally, we consider whether the delay prejudiced defendant's person or defense. *Cain*, 238 Mich App at 114, citing *Barker*, 407 US at 532. Defendant was held without bond on the CSC counts pending trial, so that delay affected his person by subjecting him to a lengthy pretrial incarceration. *Cain*, 238 Mich App at 114. And the facts of this case, although very serious, did not demand extensive pretrial preparation, as a victim's testimony alone is sufficient to convict a defendant of CSC-I, MCL 750.520h, and the prosecution's case in chief took one day to present. That said, defendant does not argue, and it does not appear, that the delay prejudiced defendant's ability to put on a defense. See *Barker*, 407 US at 521-522 (recognizing the delay between the commission of a crime and trial does not per se prejudice an accused's ability to defend himself where, if the witnesses support the prosecution, its case will be weakened if a witness becomes unavailable or their memory fades as time passes). Our Supreme Court has held that "the prejudice prong of the *Barker* test may properly weigh against a defendant incarcerated for an even longer period if his defense is not prejudiced by the delay." *Williams*, 475 Mich at 264, citing *People v Chism*, 390 Mich 104, 115; 211 NW2d 193 (1973). Thus, considering both types of prejudice, this factor weighs slightly against defendant's claims that he was prejudiced.

F. CONCLUSION

Although there is a presumption of prejudice because of the length of the delay, on balance, we hold that the prosecution overcame the presumption and defendant's speedy trial rights under the United States and Michigan Constitutions were not violated. No single *Barker* factor is "either a necessary or sufficient condition to" a meritorious speedy-trial claim, and the analysis requires us to "engage in a difficult and sensitive balancing process" specific to the facts of each case, considering the conduct of each party. *Id*. at 533. Simply put, several delays were outside of the prosecution's control, defendant complained about delays but did not file a motion, and he then requested new counsel on the eve of trial in September 2023. Thus, based on the facts of this case, we hold that no constitutional violation occurred.

III. EVIDENTIARY ISSUES

Next, defendant argues the trial court abused its discretion when it admitted his prior CSC-II conviction and the Snapchat messages that the victim said she exchanged with defendant. We disagree.

We review a trial court's decision to admit evidence for an abuse of discretion. *People v Adair*, 452 Mich 473, 485; 550 NW2d 505 (1996). "However, whether a rule or statute precludes admission of evidence is a preliminary question of law that this Court reviews de novo." *People v Denson*, 500 Mich 385, 396; 902 NW2d 306 (2017). Thus, a trial court abuses its discretion when it admits evidence that is inadmissible as a matter of law, *id*., or selects an outcome falling outside the range of principled outcomes. *People v Duenaz*, 306 Mich App 85, 90; 854 NW2d 531 (2014).

A. PRIOR CONVICTION INVOLVING SEXUAL MISCONDUCT AGAINST A MINOR

Defendant argues the trial court abused its discretion in admitting evidence of his CSC-II conviction from 2002 because the prosecution failed to articulate a proper theory of admissibility for such evidence or establish its relevance under MRE 404(b). But the trial court admitted evidence of the 2002 conviction pursuant to MCL 768.27a, not solely MRE 404(b) as defendant argues.[3] It did so after conducting the required relevance analysis under MRE 403 for other-acts evidence in cases involving sexual misconduct against minors, using the factors articulated by our Supreme Court in *People v Watkins*, 491 Mich 450, 476-477; 818 NW2d 296 (2012), before deciding to admit the evidence under MCL 768.27a.

MRE 404 governs the admissibility of other-acts evidence. Generally, evidence of other crimes, wrongs, or acts is inadmissible to prove propensity to commit such acts. MRE 404(b). See also *People v Sabin (After Remand)*, 463 Mich 43, 56; 614 NW2d 888 (2000); *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998).

However, other-acts evidence is 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 crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case. [MRE 404(b)(1).]

In addition, with MCL 768.27a, the Legislature carved out an exception to MRE 404(b) that makes other-acts evidence admissible for propensity purposes in cases involving sexual misconduct against minors. *Watkins*, 491 Mich at 469-470; see also *People v Hoskins*, 342 Mich App 194, 201-202; 993 NW2d 48 (2022). Unlike MRE 404(b), the purpose of MCL 768.27a "is to allow juries to consider evidence of other acts the defendant committed to show the defendant's character and propensity to commit the charged crime." *Watkins*, 491 Mich at 486. Under the statute, "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." MCL 768.27a(1). It is undisputed that CSC-I and CSC-II are listed offenses within the meaning of the statute. Thus, under MCL 768.27a, evidence of a prior CSC-II conviction can be admissible in a prosecution for CSC-I where it has no other proper purpose under MRE 404(b). *Watkins*, 491 Mich at 467-473.

But even where the prosecution seeks to admit evidence of a defendant's prior CSC conviction under MCL 768.27a, the probative value of the evidence must still outweigh the danger of unfair prejudice under MRE 403. *Watkins*, 491 Mich at 481. *Watkins* provides "an illustrative,

[3] The court's written order granting the prosecution's motion only references MRE 404(b), but its oral discussion of the relevant analysis at the motion hearing makes clear that it granted the motion under MCL 768.27a.

nonexhaustive list of considerations that may lead a trial court to exclude evidence under MRE 403." *Hoskins*, 342 Mich App at 201. That list includes:

> (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. [*Watkins*, 491 Mich at 487-488.]

The trial court need not discuss the *Watkins* factors on the record, *Hoskins*, 342 Mich App at 203, and need not consider all of them. *Watkins*, 491 Mich at 489 ("The foregoing considerations *may* be used by the trial court . . . . ") (emphasis added).

Here, although the trial court did not mention *Watkins*, it elicited information from the prosecution and the defense at the motion hearing to address some of the factors, such as the length of time between the acts which led to the prior conviction and the acts in this case, the ages of the victims, and the relationship between the victims and defendant. The parties clarified that there were some differences: the victim in the prior case was almost four years old and was defendant's cousin, while here there was no familial relation. But in both cases defendant and the victim were living on the same property, which provided him with the opportunity. Further, regarding the approximately 20 years that had passed between the two offenses, the prosecution argued that the 12 years defendant served for his CSC-II conviction closed the temporal gap between the prior offense and the current ones. In consideration of the *Watkins* factors, the trial court went on to hold:

> [W]hile it was over 20 years ago, the Court notes that there was a conviction for a CSC 2nd. It related to a relationship where the defendant was residing with the complainant, who was a victim . . . . The acts performed were similar [to] the charged crime in this case. Based on that, the Court finds that the probative value of the conviction from 2001, case in Alcona County, outweighs any unfair prejudice to the defendant . . . .

The trial court did not abuse its discretion in this analysis of the proper considerations under *Watkins*.

Defendant disagrees, arguing that the 20-year gap between the prior conduct and the instant offense, and the fact that the father of the earlier victim's testimony at trial revealed no meaningful details about the prior conviction to the jury, means the trial court abused its discretion and should have precluded evidence of the conviction because the probative value was outweighed by the danger of unfair prejudice under MRE 403. But "the temporal divide between [] occurrences, standing alone does not preclude the evidence's admission," see *People v Solloway*, 316 Mich App 174, 195; 891 NW2d 355 (2016), and this Court has held that a period of incarceration between offenses is relevant to the overall analysis because time incarcerated is time "during which [the defendant's] ability to sexually abuse minor victims was limited." See *Hoskins*, 342 Mich App at 207. Here, defendant served 12 of the intervening 20 years in prison, closing the temporal gap to about 8-9 years.

Further, the prior victim's father revealed the following facts about the prior offense that supported the trial court's decision to admit the evidence: defendant was living on his property at the time, the victim was "almost four," the victim was "scared" of defendant when reporting what happened, and defendant had "touched" the victim. With the judgment of sentence of the prior conviction showing that defendant pleaded guilty to CSC-II, the trial court reasonably admitted the evidence and the jury could make its own propensity inference and weigh the evidence. "[B]ecause there was a conviction, there is no lack of reliability regarding the evidence." *Duenaz*, 306 Mich App at 101. And *Watkins* recognized that given MCL 768.27a expressly authorizes propensity evidence, courts applying MRE 403 to evidence covered by the statute "must weigh the propensity inference in favor of the evidence's probative value rather than its prejudicial effect. That is, other-acts evidence admissible under MCL 768.27a may not be excluded under MRE 403 as overly prejudicial merely because it allows a jury to draw a propensity inference." *Watkins*, 491 Mich at 486-487. The prior conviction may have been prejudicial, but it was not unfairly so: the jury did not hear every detail of what defendant had done leading to the 2002 conviction, thus limiting the risk of inflaming the jury, which MRE 403 seeks to protect against.

The trial court did not abuse its discretion in admitting defendant's conviction from 2002 under MCL 768.27a.

B. SNAPCHAT MESSAGES

Defendant next argues the trial court abused its discretion when it admitted the Snapchat messages because the prosecution did not prove using a cell phone extraction that defendant sent the messages, meaning they were not authenticated. We disagree.

MRE 901 governs the authentication of evidence. "To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what its proponent claims it is." MRE 901(a). Testimony that an item is what it is claimed to be is authentication evidence that satisfies the requirement. MRE 901(b)(1). "Authentication of an evidentiary exhibit is a two-stage process. . . . At the first stage, the trial court must determine whether the proponent of the evidence has made a prima facie showing that a reasonable juror might conclude that the proffered evidence is what the proponent claims it to be." *People v Smith*, 336 Mich App 79, 106; 969 NW2d 548 (2021) (quotation marks and citation omitted). "This stage is reserved for the trial court, though it is not a particularly exacting standard. . . . The judge should permit the evidence to go to the jury unless the showing as to authenticity is so weak that no reasonable juror could consider the evidence to be what its proponent claims it to be." *Id*. at 106-107 (quotation marks and citations omitted).

If the first condition is satisfied, then "the evidence is authenticated under MRE 901(a) and may be submitted to the jury." *Id*. at 107 (citation omitted). At this second stage, the jury remains the ultimate fact-finder, and the jury decides whether the evidence is reliable and what weight to give the evidence, if any." *Id*. "When a bona fide dispute regarding the genuineness of evidence is presented, that issue is for the jury, not the trial court." *Id*. quoting *Mitchell v Kalamazoo Anesthesiology, PC*, 321 Mich App 144, 155; 908 NW2d 319 (2017). "In other words, conflicting evidence on genuineness goes to weight, not admissibility, so long as some reasonable person could believe that the item is what it is claimed to be." *Mitchell*, 321 Mich App at 155.

To authenticate the Snapchat messages, the prosecution relied on the victim's testimony and the messages themselves to show that they were an accurate representation of the messages she saved and were between her and defendant. The trial court admitted the evidence, over defense counsel's objection, on those grounds.

Defendant disagrees, arguing there is no proof that the messages came from defendant's phone because they were admitted as pictures of a phone displaying the messages, rather than printouts of actual, extracted Snapchat messages. However, the content of the messages, combined with the victim's testimony, sufficiently establishes that they were exchanged between the victim and defendant. The victim explained that "Baby" was "Jimmy," and the messages depict pictures of them together in the kitchen, them exchanging pictures back and forth, the victim asking defendant to help her with laundry and homework, the victim telling defendant to "hurry up in the shower," and, as the relationship progressed, the two making plans to be alone together in the house. These messages are consistent with the testimony that defendant lived on the same property as the victim and with the victim's testimony that she exchanged the messages with defendant, which supports authentication. There is no evidence that someone created a fake social-media account, that defendant's account was hacked, or that "Baby" was a fake account, as defendant insinuates on appeal.

At trial, the victim also testified, and the messages show that when the victim was showing defendant how to save messages in Snapchat, she sent him a screen recording of her saving a message in their message chain. The screen recording showed that, at that time, she still had defendant's name on Snapchat saved as "Jimmy," and had not yet changed it to "Baby." This evidence further authenticated the messages as being between the victim and defendant, especially given that, unless saved, the record reflects that Snapchat messages automatically delete.

Defendant was still able to—and did—cross examine witnesses to argue that defendant did not send the messages, or that the jury should give the messages no weight during its deliberations. Based on the evidence, however, the trial court did not abuse its discretion in admitting the messages because the prosecution "made a prima facie showing that a reasonable juror might conclude that the proffered evidence is what the proponent claims it to be . . . ," *Smith*, 336 Mich App at 106, meaning a jury could review the messages and determine what, if any, weight to give them during its consideration of the evidence, *Mitchell*, 321 Mich App at 155.

IV. CUMULATIVE ERROR

Finally, defendant asserts that the combination of the violation of his speedy trial rights and the evidentiary errors warrants reversal and a new trial. "It is true that the cumulative effect of several errors can constitute sufficient prejudice to warrant reversal where the prejudice of any one error would not." *People v LeBlanc*, 465 Mich 575, 591; 640 NW2d 246 (2002). However, as discussed, defendant has not established error or prejudice, so he is not entitled to a new trial.

See *People v Dobek*, 274 Mich App 58, 106; 732 NW2d 546 (2007) ("Absent the establishment of errors, there can be no cumulative effect of errors meriting reversal.").

V. SENTENCING ISSUES

Lastly, defendant challenges the constitutionality of his concurrent sentences of life without the possibility of parole (LWOP) for his CSC-I convictions.

We review preserved constitutional issues and matters involving statutory interpretation de novo. *People v Brown*, 330 Mich App 223, 229; 946 NW2d 852 (2019). The "authority to invalidate laws is limited and must be predicated on a clearly apparent demonstration of unconstitutionality." *People v Harris*, 495 Mich 120, 134, 845 NW2d 477 (2014). "Statutes are presumed to be constitutional, and we have a duty to construe a statute as constitutional unless its unconstitutionality is clearly apparent." *People v Dummer*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 369752), slip op at 2 (citation omitted). So are legislatively mandated sentences. *People v Brown*, 294 Mich App 377, 390; 311 NW2d 531 (2011). See also *People v Williams*, 189 Mich App 400, 404; 473 NW2d 727 (1991). "[T]he burden of proving that a statute is unconstitutional rests with the party challenging it." *Id*. at ___; slip op at 2.

A. STATE CONSTITUTIONAL CHALLENGE

Defendant argues that the LWOP sentences for his CSC-I convictions, which were mandatory under MCL 750.520b(2)(c) because he had a prior qualifying offense that he committed when he was around 18 years old, violated the Michigan Constitution's prohibition against cruel or unusual punishment. We disagree.

Defendant's LWOP sentence was imposed under MCL 750.520b(2)(c), which mandates the penalty of LWOP for a defendant who, when over the age of 17, committed CSC-I involving a victim less than 13 year of age, when the defendant was previously convicted of a similar sex crime with a victim less than 13 years of age. Defendant makes an as-applied challenge because he asks us to analyze the constitutionality of MCL 750.520b(2)(c) against the backdrop of the facts of his case, where he was an older adolescent at the time of the prior offense, the 2002 conviction, that triggers MCL 750.520b(2)(c)'s sentencing enhancement if convicted of CSC-I under particular facts. See *People v Kardasz*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. 165008); slip op at 33. As such, the challenge is less stringent. *Id*.

"In deciding if punishment is cruel or unusual, this Court looks to the gravity of the offense and the harshness of the penalty, comparing the punishment to the penalty imposed for other crimes in this state, as well as the penalty imposed for the same crime in other states." *Brown*, 294 Mich App at 390, citing *People v Poole*, 218 Mich App 702, 715; 555 NW2d 485 (1996). See also *People v Lorentzen*, 387 Mich 167, 176-181; 194 NW2d 827 (1972) (invalidating a mandatory minimum prison sentence of 20 years for selling any amount of marijuana).

Michigan's Constitution prohibits the infliction cruel or unusual punishment, Const 1963 Art 1, § 16, and our Supreme Court in *Lorentzen*, 387 Mich at 170 n 1, held that unusually excessive imprisonment is forbidden under Article 1, § 16. This Court already has considered whether mandatory LWOP for a second CSC offense under MCL 750.520b(2)(c) is cruel or unusual punishment. In *Brown*, this Court recognized that CSC cases are "distinctly different types

of crimes" than murder cases, and "[t]he fact that the Legislature adopted harsher punishment for those crimes involving penetration of a victim under the age of 13, even for a first-time offense, indicates that such crimes are indeed grave." *Brown*, 294 Mich App at 390-391. And while we acknowledge LWOP sentences are only otherwise mandatory in first-degree murder and other violent or highly dangerous offenses, the habitual sexual assault of children, which does not result in death or harm to a large number of people, still reflects "a high degree of moral guilt" and is an area where the state has an interest in imposing severe penalties. See *Parks*, 510 Mich at 260, citing *People v Bullock*, 440 Mich 15, 39; 485 NW2d 866 (1992). Thus, *Brown* also considered the sentences imposed for repeat sexual offenses involving minor victims in other states, concluding that the defendant failed to overcome the presumption that his legislatively mandated sentence was proportional and valid. *Id*. at 391-392.

Since *Brown* was decided in 2011, our Supreme Court decided *People v Parks* in 2022 and held that "mandatorily subjecting 18-year-old defendants convicted of first-degree murder to a sentence of life without parole violates the principle of proportionality derived from" the prohibition against cruel or unusual punishment in Const 1963 art 1, § 16. *Parks*, 510 Mich at 268. *Parks* held that such a sentence "lacks proportionality because it fails to take into account the mitigating characteristics of youth, specifically late-adolescent brain development." *Id*. at 232. The scientific consensus recognized in *Parks* was that late adolescents, as a class, "are hampered in their ability to make decisions, exercise self-control, appreciate risks or consequences, feel fear, and plan ahead," and are more prone to "impulsivity, recklessness, and risk-taking." *Id*. at 250. *Parks* also recognized that "the prefrontal cortex—the last region of the brain to develop, and the region responsible for risk-weighing and understanding consequences—is not fully developed until age 25." *Id*. (citations omitted).

In *People v Taylor*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket Nos. 166428 and 166654); slip op at 13, another first-degree murder case, our Supreme Court extended *Parks* and its holdings "to offenders who were 19 or 20 years old when they committed the offense for which they were convicted." It reasoned that "[m]andatorily condemning such offenders to die in prison, without first considering the attributes of youth that late adolescents and juveniles share, no longer comports with the 'evolving standards of decency that mark the progress of a maturing society.' *Lorentzen*, 387 Mich at 179 (quotation marks and citation omitted)." *Id*.

Defendant argues that the *Parks* and *Taylor* rationales apply with equal force when, as here, a court uses an individual's prior conviction for conduct that occurred when he was about 18 years old to enhance his sentence to mandatory LWOP for a new offense he committed in his late 30s. We disagree.

As an initial matter, defendant's age at the time he committed the prior offense is not clear. At the hearing on the motion to admit other-acts evidence, the prosecution told the trial court that the prior offenses were committed in 2000. Defendant turned 18 in April of that year, so it is unclear whether defendant committed the offense before or after his 18th birthday. However, the father of the victim testified at trial that defendant must have been 18 because the prior offense occurred when he was working a job that required him to be an adult. Defendant argues that whether he was 17, 18, or 19 at the time of the prior offense does not matter because a 19 year old's brain is "indistinguishable from an 18-year-old's brain for the purpose of punishment,

deterrence, and rehabilitation." Defendant's point is well taken under *Taylor*, ___ Mich at ___; slip op at 13-14.

We are, however, bound to follow our prior holding in *Brown*, 294 Mich App at 392, that MCL 750.520b(2)(c) is facially constitutional, and we disagree that the statute is unconstitutional as applied to defendant's particular circumstances. The fact that defendant's prior offense occurred when he was about 18 years old does not violate the cruel or unusual punishment provisions of the Michigan Constitution because, in this case, he was sentenced for the six counts of CSC-I he committed when he was about 37 or 38 years old against a child under the age of 13. The concerns for adolescent brain development expressed in *Parks* and *Taylor* simply do not apply here when defendant was in his late 30s when he committed the sentencing offense. Defendant's pre-frontal cortex was fully developed, and he was capable of appreciating the risks and consequences of his actions. *Parks*, 510 Mich at 250.

Nor does the age at which he committed the prior offense matter because our statutes commonly call for enhanced sentences or mandatory minimums based on an offender's criminal history and the type of offense. See MCL 769.10 through MCL 769.12, MCL 750.520f, and MCL 333.7413. Some of those prior offenses may have occurred when the defendant was about 18, but the age at which the defendant committed the prior offense has no bearing on their habitual offender status. See *People v Jones*, 297 Mich App 80, 84-86; 823 NW2d 312 (2012) (holding the habitual offender statutes focus only on whether a defendant has been convicted, not the age they were during the prior offense, or whether they were sentenced as a juvenile). The same is true with respect to the sentencing guidelines, where the age of the offender at the time of a prior offense also does not preclude an offense from raising the prior record variable (PRV) score. In other words, the statute here does not impose LWOP for a single CSC-I conviction defendant committed when he was about 18, it enhances the applicable penalty for his conduct when he was in his late 30s.

As such, we decline to extend *Parks* and *Taylor* to offenders whose conduct for their qualifying prior conviction under MCL 750.520b(2)(c) occurred when they were late adolescents and hold that defendant's LWOP sentence is not cruel or unusual punishment under the Michigan Constitution.

B. FEDERAL CONSTITUTIONAL CHALLENGE

Finally, defendant argues his sentence of mandatory LWOP violated the Fifth and Sixth Amendments to US Constitution because it was enhanced based on a prior conviction that was not proven beyond reasonable doubt nor found by a jury. We disagree.

Under the United States Constitution's Fifth and Sixth Amendments, "virtually any fact that increase[s] the prescribed range of penalties to which a criminal defendant is exposed must be resolved by a unanimous jury beyond a reasonable doubt (or freely admitted in a guilty plea)." *Erlinger v United States*, 602 US 821, 822; 144 S Ct 1840; 219 L Ed 2d 451 (2024) (cleaned up). However, the United States Supreme Court in *Almendarez-Torres v United States*, 523 US 224; 118 S Ct 1219; 140 L Ed 2d 350 (1998), held that a prior criminal conviction was a sentencing factor that could be found by the court, not an element of the crime to be found by a jury, and it later reinforced *Almendarez-Torres*, holding: "*Other than the fact of a prior conviction*, any fact

that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." *Apprendi v New Jersey*, 530 US 466, 490; 120 S Ct 2348; 147 L Ed 2d 435 (2000) (emphasis added). This prior-conviction exception to the general *Apprendi* rule was adopted by our Supreme Court in *People v McCuller*, 479 Mich 672, 687-688; 739 NW2d 563 (2007). Defendant argues that *Almendarez-Torres* was wrongly decided, and that the jurisprudential support for it and related caselaw has eroded such that we should not follow it. But " 'state courts are bound by United States Supreme Court decisions construing federal law,' including the Constitution." *People v Lewis*, 501 Mich 1, 7; 903 NW2d 816 (2017) (citation omitted).

Alternatively, defendant tries to distinguish *Almendarez-Torres* and urges us not to follow it because here, he argues, for MCL 750.520b(2)(c)'s LWOP enhancement to apply, the court was not required to find only the fact of a prior CSC conviction, it also had to make a factual finding that the prior CSC conviction was "against an individual less than 13 years of age." MCL 750.520b(2)(c). The problem with defendant's argument, however, is that the CSC offense he previously pleaded guilty to, MCL 750.520c(1)(a), already required a factual determination that the victim was less than 13 years old—indeed, "under 13" was written in the judgment. Defendant is not entitled to relief under prevailing United States Supreme Court and Michigan Supreme Court precedent.

Affirmed.

/s/ Andrew J. Lievense
/s/ Stephen L. Borrello
/s/ Mariam S. Bazzi