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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v MICHAEL VAUGHN BAXTER, Defendant-Appellant.	UNPUBLISHED November 12, 2026 10:52 AM No. 367435 Jackson Circuit Court LC No. 2020-002690-FC

Before: M. J. KELLY, P.J., and RIORDAN and RICK, JJ.

PER CURIAM.

Defendant appeals as of right his jury-trial convictions of four counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(a). The trial court sentenced defendant to serve concurrent terms of 25 to 40 years' imprisonment for each conviction. We affirm.

I. FACTUAL BACKGROUND

Defendant married his first wife, Melissa Krajewski, in 1994. The couple had four children: MB, AB, FB, and PB. Defendant's wife's younger sister, SG, later reported that defendant had sexually abused her. She maintained that defendant abused her over a period of approximately 18 months. It began when SG was nine years old while on family trip to Alabama. She reported that defendant took her hand while she was sleeping and used it to masturbate until he ejaculated. SG pretended to be asleep, and defendant acted as though nothing had happened the following day. Defendant later admitted the incident to Krajewski.

SG further testified that defendant repeatedly sexually abused her in fifth and sixth grade. SG testified that, while they sat on a basement sofa, defendant pushed his fingers against her underwear and into her genital opening and her buttocks. He then moved beneath her underwear and repeated the contact, touching between her labia and rubbing her anus. SG denied that his fingers went fully inside her vagina. She also described an incident at a computer during which defendant touched her over her clothing before Krajewski entered the room. Defendant later admitted to Krajewski that he had inappropriately touched SG during that incident and on other occasions, including underneath her clothing and between her legs. SG further testified that, when she was approximately 12 years old, defendant climbed into a sofa bed where she was sleeping,

pressed himself against her from behind, whispered, "I'm sorry," and touched her while she pretended to be asleep.

SG disclosed defendant's conduct to two friends while she was in high school. In 2003, when SG was 19 years old, she reported the abuse to Jackson County Sheriff's Office (JCSO) Detective Ronald Lee Rose II, who prepared a police report. Krajewski filed for divorce from defendant in 2003.

MB, defendant and Krajewski's oldest child, was born in 1997. He testified that defendant first sexually touched him when he was four years old. According to MB, defendant woke him, pulled down his pajama bottoms, and touched his buttocks and anus. MB also testified that defendant and his second wife, Dawn Baxter, sexually abused him when he was a teenager. Following a suicide attempt when MB was approximately 16 years old, defendant and Baxter allowed him to sleep in their bed. MB testified that, on one occasion, Baxter began engaging him in sexual conduct while defendant attempted to penetrate his anus with either his finger or penis. MB eventually fled the bedroom.

MB's accounts of the alleged abuse varied. He initially told JCSO Detective Mark Easter that defendant had penetrated his anus with a finger, apparently while MB was alone with defendant. MB later told JCSO Detective Sergeant Bryan Huttenlocker that defendant had penetrated him with his penis while MB was engaging in sexual conduct with Baxter. MB also made inconsistent statements about the nature of his sexual contact with Baxter.

MB, AB, and FB described overtly sexual behavior in defendant and Baxter's home. AB and FB recalled a practice referred to as "naked time," during which defendant and Baxter lay naked together under the covers and allowed the children to join them in bed. AB also testified that defendant commented on her body and touched her upper thigh when she was 13 years old.

Defendant's second cousin, ABS, testified that defendant sexually assaulted her during a family gathering in 1995, when she was approximately 15 years old. According to ABS, defendant took her on a jet ski, forcibly attempted to kiss her, touched her vagina, and pressed his naked penis against her buttocks after pulling down her bathing suit bottoms. Krajewski testified that defendant later admitted attempting to kiss ABS.

The prosecutor initially charged defendant with six counts of CSC-I involving two of the children who alleged defendant violated them: MB (his own child) and SG (his younger sister-in-law). After the trial court resolved some pretrial motions, the prosecutor filed an amended information charging defendant with four counts of CSC-I involving SG and one count of third-degree criminal sexual conduct (CSC-III) involving MB. The CSC-I counts alleged two acts of digital-vaginal penetration and two acts of digital-anal penetration. Before trial, defendant moved to sever the charges involving the two complainants under MCR 6.120(C). The trial court denied the motion.

Before trial, defendant objected to the proposed testimony of Dr. James Henry, an expert in childhood trauma. The trial court permitted general testimony but allowed defense counsel to object if Dr. Henry exceeded the permissible scope. At trial, Dr. Henry testified about childhood trauma, delayed disclosure, family dynamics, and the effects of trauma on behavior and memory. He had not interviewed either complainant or reviewed the evidence in this case. On cross-

examination, he acknowledged that both truthful and untruthful accounts could be consistent or inconsistent and that behaviors associated with trauma could have other causes.

Defendant called retired Detective Rose, who testified that his report of SG's initial disclosure in 2003 did not mention penetration, ejaculation, or the incident involving defendant saying "I'm sorry" while lying behind SG on a sofa bed. The report also did not indicate that Krajewski reported penetration, although she described defendant's touching of SG and his placement of SG's hand on his penis.

At the close of trial, the court instructed the jury on each charged offense and limited the purposes for which it could consider Dr. Henry's testimony. During deliberations, the court provided further definitions of penetration and instructed the jurors to consider each count separately. After the jury reported difficulty reaching a verdict, the court gave a deadlocked-jury instruction. The jury convicted defendant of the four CSC-I counts involving SG and acquitted him of the CSC-III count involving MB. Each juror confirmed the verdict when polled. The trial court sentenced defendant to concurrent prison terms of 25 to 40 years for each conviction.

While this appeal was pending, defendant moved for a new trial and other postconviction relief. He challenged the denial of his severance motion, Dr. Henry's testimony, the proportionality of his sentence, and trial counsel's effectiveness. Defendant also asserted that the prosecutor violated *Brady v Maryland*, 373 US 83; 83 S Ct 1194; 10 L Ed 2d 215 (1963), by withholding statements purportedly made by MB to his paternal grandmother. According to those statements, MB threatened to pursue criminal charges against defendant unless his grandmother paid his college expenses and claimed that both he and SG had fabricated their allegations.

The trial court denied defendant's motion for new trial on all grounds except the alleged *Brady* nondisclosure, for which it ordered an evidentiary hearing. Before the hearing, however, defendant stipulated to the withdrawal of his claim that the prosecution had or should have had the statements. The parties agreed that an evidentiary hearing was no longer necessary. The court accepted the stipulation and denied the motion for a new trial in full.

II. ANALYSIS

A. MOTION FOR NEW TRIAL AND MOTION TO SEVER

Defendant argues that the trial court erred by denying his motion to sever the charges involving SG and MB and his subsequent motion for a new trial. We disagree.

We review the denial of a motion for new trial for an abuse of discretion. *People v Miller*, 482 Mich 540, 544; 759 NW2d 850 (2008). Whether joinder is permissible presents a mixed question of fact and law. *People v Gaines*, 306 Mich App 289, 304; 856 NW2d 222 (2014). We review the trial court's factual findings for clear error and its interpretation of MCR 6.120 de novo. *Id*. The trial court's ultimate decision of whether to join related offenses is reviewed for an abuse of discretion. *Id*.

MCR 6.120(B)(1) permits joinder of offenses involving the same conduct or transaction, a series of connected acts, or acts constituting parts of a single scheme or plan. On a defendant's motion, unrelated offenses must be severed. MCR 6.120(C). Defendant argues that the allegations

involved distinct complainants, locations, and time periods.[1] But the allegations shared more than defendant's identity and the general nature of the offenses. Defendant allegedly exploited his familial relationships to obtain close physical access to both complainants. SG described sexual touching while sitting with defendant under a blanket and while sleeping in family homes. MB likewise described sexual contact during childhood and a later assault after defendant and Baxter invited him to share their bed. In both accounts, defendant used ordinarily nonsexual family interactions to gain access to a minor's intimate areas. These similarities supported treating the acts as parts of a scheme to sexually exploit minors within the family, despite differences in their ages and the time of the alleged conduct. See *Gaines*, 306 Mich App at 304-305 (holding that offenses involving three minor complainants were related because they formed part of a common scheme of sexual exploitation); *People v Wisniewski*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 361978); slip op at 3-5 (holding that offenses involving multiple complainants were properly joined because the defendant exploited relationships of trust and engaged in similar patterns of sexual abuse).

The trial court also recognized that evidence of defendant's alleged sexual misconduct with each complainant would be admissible in a separate trial involving the other under MCL 768.27a, subject to MRE 403. The resulting overlap in witnesses and evidence supported trying the related charges together. See MCR 6.120(B)(2). Even assuming improper joinder, defendant has not shown prejudice requiring reversal because separate trials would have included substantially the same evidence. See *Williams*, 483 Mich at 243-244. The evidence was not unusually complex, and the court directed the jury to consider each crime separately. Furthermore, the jury's decision to acquit defendant of CSC-III supports that the jury clearly distinguished the allegations. Defendant is not entitled to a new trial on this ground.

B. PROSECUTORIAL MISCONDUCT

Defendant next claims that the prosecutor failed to disclose exculpatory evidence in violation of *Brady* and made an inflammatory remark during her opening statement. Neither claim warrants relief.

Defendant's nondisclosure claim concerns statements in which MB's paternal grandmother asserted that MB threatened to pursue false allegations against defendant unless she paid his expenses and claimed that he and SG had lied about defendant's sexual abuse. The trial court ordered an evidentiary hearing on the claim. Before the hearing, however, defendant expressly withdrew his argument that the prosecution had or should have had the documents and stipulated that a hearing was unnecessary. By withdrawing that argument, defendant waived appellate review of the alleged *Brady* violation. *People v Kowalski*, 489 Mich 488, 503; 803 NW2d 200 (2011) (explaining that waiver extinguishes any claimed error). Regardless, defendant has not established that the prosecution suppressed the documents, an essential element of a *Brady* violation. *People v Chenault*, 495 Mich 142, 150; 845 NW2d 731 (2014).

[1] Defendant relies on *People v Daughenbaugh*, 193 Mich App 506; 484 NW2d 690 (1992), but our Supreme Court rejected its restrictive interpretation of MCR 6.120 as inconsistent with the amended court rule. *People v Williams*, 483 Mich 226, 238-239; 769 NW2d 605 (2009).

Defendant also challenges the prosecutor's opening remark that defendant and other people who use children for sexual gratification "can't be fixed," asserting that it was inflammatory and conveyed her personal opinion. Defendant did not object at trial. Thus, we review this claim for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

We review a prosecutor's remarks in context to determine whether they denied the defendant a fair trial. *People v Mullins*, 322 Mich App 151, 172; 911 NW2d 201 (2017). Prosecutors may argue the evidence and reasonable inferences from it, but may not make inflammatory appeals that unfairly prejudice the defendant. *Id*.; *People v Watson*, 245 Mich App 572, 591; 629 NW2d 411 (2001).

The "can't be fixed" remark was inflammatory. It lacked evidentiary support, and the prosecutor repeated the assertion in closing. But the statement did not suggest the prosecutor had undisclosed information establishing defendant's guilt. Defendant has not shown that the rhetoric affected the verdict. The jury heard SG's account and Krajewski's testimony about defendant's admissions. Defense counsel challenged the omissions in SG's earlier report through Detective Rose. Further, the court instructed the jury that the attorneys' statements and arguments were not evidence and that it should accept only assertions supported by the evidence or its common sense and general knowledge. See *People v Moorer*, 262 Mich App 64, 79; 683 NW2d 736 (2004) (recognizing that jury instructions may cure prejudice from improper prosecutorial remarks). Jurors are presumed to follow the court's instructions. *People v Zitka*, 335 Mich App 324, 348; 966 NW2d 786 (2020).

C. EXPERT TESTIMONY

Defendant argues that the trial court erred by failing to limit the scope of Dr. Henry's trial testimony. We disagree.

"To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal." *People v Thorpe*, 504 Mich 230, 252; 934 NW2d 693 (2019). Further, to preserve a claim of error regarding an expert witness's testimony, a defendant must make a timely objection to that testimony in the trial court. *People v Bynum*, 496 Mich 610, 628; 852 NW2d 570 (2014). Defendant's pretrial objection preserved his challenge to the admission of general trauma testimony. We review that ruling for an abuse of discretion. *Thorpe*, 504 Mich at 250-251. However, to the extent defendant contends that this trial testimony exceeded the permitted scope, he did not object on that basis. Consequently, our review is for plain error affecting substantial rights. *Id*. at 251-252; *Carines*, 460 Mich at 763.

Before trial, defense counsel argued that Dr. Henry's proposed testimony would improperly explain the complainants' inconsistent accounts as products of sexual abuse, even though he had never examined them. The court permitted general testimony while allowing objections if Dr. Henry crossed into impermissible vouching. Defendant argues that the testimony

nevertheless bolstered the complainants' credibility and was irrelevant because they were adults when they reported the abuse and testified. Neither argument warrants relief.[2]

An expert in a child-sexual-abuse case may not testify that abuse occurred, vouch for a complainant's credibility, or opine that the defendant is guilty. *People v Peterson*, 450 Mich 349, 352; 537 NW2d 857 (1995). However, an expert may testify about "typical and relevant symptoms of child sexual abuse" to explain behavior that a jury might otherwise view as inconsistent with abuse. *Id*. at 352-353. An expert may also address similarities between a complainant's behavior and that of other abuse victims to rebut an attack on the complainant's credibility. *Id*. at 353. Such testimony may explain a complainant's behavior but may not establish that sexual abuse occurred on the basis of that behavior alone. *Thorpe*, 504 Mich at 255-258.

Dr. Henry testified about delayed disclosure, fragmented memories, family dynamics, and responses to trauma. This testimony was relevant because defendant challenged SG's and MB's credibility on the basis of their delayed disclosures and inconsistent accounts. Although defendant emphasizes that both complainants testified as adults, his challenges concerned their accounts of abuse allegedly occurring during childhood. Further, although the prosecutor posed hypotheticals resembling MB's allegations, Dr. Henry did not opine that either complainant had been abused or was telling the truth. On cross-examination, he acknowledged that inconsistent statements could be truthful or false and that the behaviors he described could have other causes. The trial court also instructed the jury that Dr. Henry's testimony could not establish that a crime occurred, that defendant committed it, or that either complainant was truthful. Accordingly, defendant has not established that the trial court abused its discretion by admitting Dr. Henry's testimony or that its scope constituted plain error.

D. SENTENCE

Defendant argues that his sentences are disproportionate and constitute cruel or unusual punishment. We disagree.

We review a sentence's proportionality for an abuse of discretion and a constitutional sentencing challenge de novo. *People v Milbourn*, 435 Mich 630, 636; 461 NW2d 1 (1990); *People v Stovall*, 510 Mich 301, 312; 987 NW2d 85 (2022). The proportionality principle requires a sentence proportionate to the seriousness of the circumstances surrounding the offense and the offender. *Milbourn*, 435 Mich at 636. A sentence within the guidelines range is presumptively proportionate, but unusual circumstances may rebut that presumption. *Id*. at 661; *People v Posey*, 512 Mich 317, 359-360; 1 NW3d 101 (2023).

Defendant's claim that his sentences exceeded the guidelines by 15 years rests on a mistaken comparison. The former judicial guidelines applicable to these offenses recommended minimum terms of 120 to 300 months, and the court imposed 300-month minimums. The 40-year maximum terms do not constitute departures from the recommended minimum range. Nor did the

[2] As noted above, the jury acquitted defendant of the charge involving MB. It is disingenuous to claim Dr. Henry's testimony inappropriately swayed the jury on that count.

court impose life sentences. Defendant's assertion that current guidelines would yield a shorter sentence does not establish that the court erred in applying the guidelines governing his offenses.

Defendant has not rebutted the presumption of proportionality. The jury convicted him of four acts of sexual penetration involving his then-wife's younger sister, who was under 13 years old at the time. He argues that his sentence was disproportionate in light of his lack of prior convictions and the favorable character letters submitted on his behalf. Although these considerations were relevant to sentencing, they did not require the trial court to impose a lesser sentence. At sentencing, the trial court expressly considered punishment, rehabilitation, deterrence, and protection of society. It also addressed the passage of time, explaining that SG had lived with the harm throughout that period. The repeated abuse, familial relationship, and enduring harm supported the trial court's decision to impose minimum sentences at the upper end of the guidelines range.

Defendant's constitutional challenge requires a separate analysis because a sentence that satisfies the nonconstitutional principal of proportionality may nevertheless constitute cruel or unusual punishment. *People v Eads*, ___ Mich ___, ___; ___ NW3d ___ (2026) (Docket No. 168205); slip op at 11-14. The Michigan Constitution prohibits "cruel or unusual punishment," Const 1963, art 1, § 16, whereas the Eighth Amendment prohibits "cruel and unusual punishments," US Const, Am VIII. Because Michigan's provision prohibits punishments that are either cruel or unusual, it affords broader protection than its federal counterpart. *People v Bullock*, 440 Mich 15, 30-31; 485 NW2d 866 (1992). In determining whether a sentence violates that prohibition, we consider the severity of the sentence relative to the offense, penalties imposed for other offenses in Michigan, penalties imposed for the same offense in other jurisdictions, and the goal of rehabilitation. *Id*. at 33-34.

Defendant's concurrent sentences of 25 to 40 years' imprisonment reflect the seriousness of his repeated sexual assaults against a child and permit eventual parole consideration. Defendant identifies no comparable offenses or sentencing practices supporting his contention that more culpable offenders receive shorter sentences. Nor do his favorable character references establish that his sentences are incompatible with rehabilitation. Defendant fails to establish that his sentences constitute cruel or unusual punishment under the Michigan Constitution or cruel and unusual punishment under the federal Constitution.

E. INEFFECTIVE ASSISTANCE OF COUNSEL

Finally, defendant argues that trial counsel was ineffective for failing to investigate and present exculpatory evidence, consult or retain an expert to rebut Dr. Henry, and present evidence that Krajewski instigated the allegations. We disagree.

Whether counsel was ineffective presents a mixed question of fact and constitutional law. We review factual findings for clear error and constitutional questions de novo. *People v Trakhtenberg*, 493 Mich 38, 47; 826 NW2d 136 (2012). Because no evidentiary hearing was held, our review is limited to errors apparent from the record. *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007). Defendant must establish objectively unreasonable performance and a reasonable probability that, but for counsel's deficient performance, the result would have been different. *People v Fyda*, 288 Mich App 446, 450; 793 NW2d 712 (2010). Counsel must conduct a reasonable investigation or reasonably determine that further investigation is unnecessary. *Trakhtenberg*, 493 Mich at 52.

Defendant first relies on statements attributed to MB's paternal grandmother concerning MB's alleged threats and admissions of fabrication. He argues that counsel should have discovered the statements, called her as a witness, and used the evidence to impeach the complainants. The record does not establish what investigation counsel conducted or what information would have alerted him to pursue or obtain the statements. Their later production does not, without that factual foundation, establish an unreasonable failure to investigate. This wholly lacks merit given the jury acquitted defendant of the charge involving MB. As to SG, defendant has not established that MB had personal knowledge supporting his alleged assertion that she fabricated her allegations or explained how that assertion would have been admissible to impeach her. Defendant therefore has not established deficient performance or a reasonable probability of a different result.

Defendant also relies on a separate statement attributed to his parents concerning guardianship proceedings and asserting that SG's stepbrother sexually abused her as a child. Michigan's rape-shield statute, MCL 750.520j, generally limits evidence of a complainant's sexual history. *People v Sharpe*, 502 Mich 313, 326; 918 NW2d 504 (2018). Its protections extend to prior sexual abuse, although a defendant's rights to confrontation and to present a defense may require admission in appropriate circumstances. *People v Masi*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 165620); slip op at 12-13, 16.

Defendant maintains that the prior abuse would have supplied an alternative explanation for SG's trauma and should have been brought to Dr. Henry's attention. But Dr. Henry did not attribute SG's behavior to defendant or diagnose her as a victim of his abuse. He also acknowledged that the behaviors he described could have other causes. Evidence that another person abused SG would not and does not, by itself, establish that defendant did not abuse her. Defendant has not shown that the proposed evidence was necessary to confront particular testimony or present his defense. Defendant therefore has not established a basis for admission despite the rape-shield statute or a reasonable probability that further investigation of this allegation would have changed the verdict.

Defendant next challenges counsel's alleged failure to consult an expert and his failure to call a rebuttal expert. The record does not establish whether counsel consulted an expert. Although counsel called no expert at trial, decisions about which witnesses to present are generally matters of trial strategy. *People v Muhammad*, 326 Mich App 40, 66; 931 NW2d 20 (2018). Counsel cross-examined Dr. Henry about his lack of knowledge of the case, the inability to distinguish truth from fabrication merely through consistency, and alternative explanations for behaviors associated with trauma. Defendant identifies no expert or proposed testimony that would have rebutted Dr. Henry's opinions or otherwise assisted the defense. Without such a showing, the asserted benefit of additional expert assistance is speculative and establishes neither deficient performance nor prejudice.

Finally, counsel pursued the theory that Krajewski influenced the allegations. He questioned SG about the timing of her report in relation to Krajewski's divorce from defendant, questioned Krajewski about her request for joint custody despite her knowledge of the alleged abuse, and argued in closing that the divorce provided a motive for the accusations. Defendant faults counsel for relying on cross-examination rather than additional direct evidence but identifies no further admissible evidence counsel could have presented to substantiate that theory. The failure

to establish the theory to the jury's satisfaction does not show that counsel's performance was constitutionally deficient.[3]

Affirmed.

/s/ Michael J. Kelly
/s/ Michael J. Riordan
/s/ Michelle M. Rick

[3] Defendant also invokes cumulative error. The combined effect of multiple errors may warrant reversal when it deprives a defendant of a fair trial. *People v Dobek*, 274 Mich App 58, 106; 732 NW2d 546 (2007). Because defendant has not established multiple errors that cumulatively deprived him of a fair trial, he is not entitled to relief on this basis.