

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOUGLAS JAMES HOFFMAN,

Defendant-Appellant.

---

UNPUBLISHED

May 21, 1996

No. 180835

LC No. 94-50728 FC

94-50739

Before: O’Connell, P.J., and Hood and C.L. Horn, \* JJ.

PER CURIAM.

Defendant was convicted by jury of two counts of first-degree criminal sexual conduct. MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). He subsequently pleaded guilty to being an habitual offender, second offense. MCL 769.10; MSA 28.1082. He was sentenced to concurrent terms of imprisonment of twenty to fifty years. Defendant now appeals as of right, and we affirm.

Defendant raises four allegations of error on appeal. First, defendant argues that the trial court abused its discretion in admitting into evidence alleged hearsay testimony. The court allowed Kathleen Smith, the complainants’ baby-sitter, to testify concerning statements made by the complainants two months after the events underlying the prosecution. When defense counsel objected, the court responded, “[i]t’s not hearsay, 803(A) [sic], overrule [sic].”

MRE 803A sets out what is known as the tender years exception to the hearsay rule, providing, in pertinent part, as follows:

A statement describing an incident that included a sexual act performed with or on the declarant by the defendant . . . is admissible to the extent that it corroborates testimony given by the declarant during the same proceeding, provided:

(1) the declarant was under the age of ten when the statement was made;

---

\* Circuit judge, sitting on the Court of Appeals by assignment.

(2) the statement is shown to have been spontaneous and without indication of manufacture;

(3) either the declarant made the statement immediately after the incident or any delay is excusable as having been caused by fear or other equally effective circumstance; and

(4) the statement is introduced through the testimony of someone other than the declarant.

In the present case, we find no abuse of discretion. The statements were introduced to corroborate the complainants' earlier testimony on direct examination of sexual abuse. MRE 803A. Both complainants were under the age of ten when the statements were made. MRE 803A(1). The witness' description of the statements revealed them to be spontaneous, and with no indication of having been manufactured. MRE 803A(2). While the statements were made some two months after the event, the one complainant testified that she had been "scared" to tell her mother of the incident, and the other that she "didn't want to get in trouble by [defendant]." MRE 803A(3); see also *People v Hammons*, 210 Mich App 554, 558; 534 NW2d 183 (1995). Finally, the statements were introduced by a witness other than the complainants themselves. MRE 803A(4). Therefore, we find that the statements were properly admissible pursuant to MRE 803A.

Second, defendant contends that he was denied his right to a fair trial where the prosecution elicited testimony designed to bolster the credibility of the complainants. Defendant did not object below. "Absent a showing of manifest injustice, objections to the admission of evidence cannot be raised for the first time on appeal." *People v Stimage*, 202 Mich App 28, 29; 507 NW2d 778 (1993). Considering the extensive, consistent testimony from numerous witnesses which defendant does not challenge on appeal, we find no manifest injustice to have occurred.

Third, defendant submits that the court improperly assumed the role of prosecutor with respect to certain questions it asked of one of the complainants. Whether a defendant was denied a fair trial by the trial court's questioning of a witness is a question of law subject to de novo review by this Court. *People v Conyers*, 194 Mich App 395, 405; 487 NW2d 787 (1992). The test, in the present context, is "whether partiality 'quite possibly could have influenced the jury to the detriment of defendant's case.'" *Id.*, quoting *People v Sterling*, 154 Mich App 223, 228; 397 NW2d 182 (1986), in turn quoting *People v Redfern*, 71 Mich App 452, 457; 248 NW2d 582 (1976) (emphasis in original). Our review of the transcript reflects no partiality that could possibly have influenced the jury to the detriment of defendant's case. Therefore, we hold that defendant was not denied his right to a fair trial.

Finally, defendant claims that he is entitled to a new trial because the court, during deliberations, failed to respond to a question from the jury concerning the difference between first- and second-degree criminal sexual conduct before the jury reached its verdict. To warrant a new trial, an irregularity in the proceedings must be sufficiently prejudicial to the rights of the defendant that it impairs his ability to obtain a fair trial. *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995). In the

present case, we find no prejudice to defendant. The court properly instructed the jury on the elements of each offense. The court was otherwise engaged when the jury sent a note requesting the court to redefine the offenses, and, by the time the court prepared an answer, it was announced that the jury had reached its verdict. Defendant has presented no evidence that he was prejudiced by this irregularity. Therefore, a new trial is not warranted.

Affirmed.

/s/ Peter D. O'Connell

/s/ Harold Hood

/s/ Carl L. Horn