# STATE OF MICHIGAN

# COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE WILLIAM MRACNA,

Defendant-Appellant.

UNPUBLISHED
March 10, 1998

No. 188523
Mason Circuit Court
LC No. 94-012110-FC

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Before: MacKenzie, P.J., and Holbrook, Jr. and Saad, JJ.

PER CURIAM.

A jury convicted defendant as charged of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), and second-degree criminal sexual conduct, MCL 750.520c; MSA 28.788(3). He appeals as of right; we affirm.

The trial court did not abuse its discretion by denying defendant's motion to remand for a preliminary examination. See *People v Skowronek*, 57 Mich App 110, 115; 226 NW2d 74 (1974). Defendant's motion did not assert that the waiver of preliminary examination was defective or that he was not apprised of the nature of the charges against him. Although it appears that the examination was sought to allow new defense counsel to prepare, as in *Skowronek*, we do not believe that that ground is an adequate justification to reverse the convictions.

We also reject defendant's claims that the trial court erred by denying his motions for an adjournment. Defendant has not demonstrated prejudice. See *Lansing v Hartsuff*, 213 Mich App 338, 351; 539 NW2d 781 (1995).

Defendant argues that the trial court erred by denying his motion to suppress his statement. Having reviewed the record, we agree with the trial court that defendant's testimony was not credible and that the statement was voluntarily made. *People v Marshall*, 204 Mich App 584, 587; 517 NW2d 554 (1994).

The trial court did not abuse its discretion by denying defendant's request for a competency or psychiatric examination of the complainant. Although the record indicates that the complainant claimed

to have previously seen the image of her dead dog appear and then fade away, we agree with the trial court that because of the limited incidents of apparent hallucination, a competency or psychiatric examination was unnecessary. *People v Freeman (After Remand)*, 406 Mich 514; 280 NW2d 446 (1979); *People v Graham*, 173 Mich App 473; 477-478; 434 NW2d 165 (1988).

The trial court did not abuse its discretion by denying defendant's motion to dismiss for purported discovery violations by the prosecutor. The exclusion of evidence is a remedy reserved for the most egregious cases. *People v Taylor*, 159 Mich App 468, 487; 406 NW2d 859 (1987). The circumstances of this case are not egregious, and failure to exclude evidence or dismiss the charges was not an abuse of discretion.

The trial court's denial of defendant's motion in limine concerning other acts of sexual molestation of the complainant by him was not an abuse of discretion. We agree with the trial court that the reasoning in *People v DerMartzex*, 390 Mich 410; 213 NW2d 97 (1973), is sound and valid even after the Supreme Court's decision in *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993).

Defendant argues that he was entitled to have the two charges tried separately because they were "unrelated" under MCR 6.120(B). We disagree. The case of *People v Miller*, 165 Mich App 32; 418 NW2d 668 (1988), remanded for reconsideration on other grounds 434 Mich 915; 456 NW2d 235 (1990), is analogous to the present situation. As in *Miller*, the charges in this case involve the same victim and setting, and the offenses were initiated by defendant. We find the cases of *People v Tobey*, 401 Mich 141; 257 NW2d 537 (1977), and *People v Daughenbaugh*, 193 Mich App 506; 484 NW2d 690, modified 441 Mich 867 (1992), to be distinguishable.

The trial court did not abuse its discretion by denying defendant's motion for a new trial. Having reviewed the proferred newly discovered evidence, we conclude that defendant has not demonstrated that the result would probably have been different. *People v Johnson*, 451 Mich 115, 118 n 6; 545 NW2d 637 (1996).

Defendant argues that there was insufficient evidence to support his conviction for CSC-2. Defendant's argument focuses on the inconsistencies and lack of specificity in the complainant's testimony concerning when the incident occurred. However, time is not an element of a sexual assault offense. *People v Naugle*, 152 Mich App 227, 235; 393 NW2d 592 (1986). The inconsistencies in the complainant's testimony and earlier representations were matters for the jury to consider when deciding the weight her testimony would be given. As in *Naugle*, we will defer to the jury's role of weighing the evidence in this regard.

We find no basis for relief in any of the "MISCELLANEOUS ISSUES" raised together by defendant. In light of the final instructions, defendant was not prejudiced by the court's reading of the information to the jury at the beginning of the trial. Although defendant claims his cross-examination of the complainant was restricted, he has not asserted that he was precluded from eliciting any particular information. A review of the record indicates that defense counsel was allowed to thoroughly cross-examine the complainant. The court did not abuse its discretion. *People v Davis*, 199 Mich App 502,

516-517; 503 NW2d 457 (1993). Defendant was not denied a fair trial by the detective hugging the complainant in front of the jury. Any error in the admission of the complainant's friend's testimony about what the complainant told her was harmless. *People v Rodriguez (After Remand)*, 216 Mich App 329, 332; 549 NW2d 359 (1996). Defendant was not prejudiced by the prosecutor's suggestion to one of defendant's character witnesses that, because defendant had confessed, the witness may be embarrassed if he testified on defendant's behalf. The witness explained the circumstances of the conversation at trial and continued to give testimony favorable to defendant. Defendant did not raise a timely objection to the prosecutor's statement concerning Detective Hartrum. Even after closing arguments, defendant did not assert that the statement was improper as an attempt to bolster the detective's credibility. The remark was innocuous, and failure to review it further will not result in manifest injustice. See *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Finally, the jury instructions as a whole sufficiently protected defendant's rights. *People v Gaydosh*, 203 Mich App 235, 237; 512 NW2d 65 (1994).

Defendant is not entitled to resentencing. He has not demonstrated that he was prejudiced by the court's denial of his motion to adjourn. *Lansing, supra*. Further, his challenges to the scoring of the guidelines do not state a cognizable claim on appeal. *People v Mitchell*, 454 Mich 145, 176-177; 560 NW2d 600 (1997).

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Donald L. Holbrook, Jr.
/s/ Henry William Saad