

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

TIMOTHY ALLEN GREENE,

Defendant-Appellee.

UNPUBLISHED

August 19, 2008

No. 278343

Allegan Circuit Court

LC No. 06-014817-FH

Before: Schuette, P.J., Zahra and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of fourth-degree criminal sexual conduct, MCL 750.520(e)(1)(a). Defendant appeals as of right. This appeal has been decided without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant argues that the trial court erred by permitting the expert testimony adduced at trial to vouch for the credibility of the victim. Defendant did not object to the challenged testimony below. An unpreserved issue is reviewed for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Even where such error is found, this Court will reverse the trial court judgment only if a plain error resulted in the conviction of an innocent defendant or seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *Id.* at 763-764.

Expert testimony in child sexual abuse cases is directed by our Supreme Court's holding in *People v Beckley*, 434 Mich 691; 456 NW2d 391 (1990), and further explained in *People v Peterson*, 450 Mich 349; 537 NW2d 857 (1995), amended 450 Mich 1212 (1995). In child sexual abuse cases: "(1) an expert may not testify that the sexual abuse occurred, (2) an expert may not vouch for the veracity of a victim, and (3) an expert may not testify whether the defendant is guilty." *Id.* at 352. However:

(1) an expert may testify in the prosecution's case in chief regarding typical and relevant symptoms of child sexual abuse for the sole purpose of explaining a victim's specific behavior that might be incorrectly construed by the jury as inconsistent with that of an actual abuse victim, and (2) an expert may testify with regard to the consistencies between the behavior of the particular victim and other victims of child sexual abuse to rebut an attack on the victim's credibility. [*Id.* at 352-353.]

These guidelines were established to provide limitations on expert testimony while maintaining a fair and equitable solution to credibility contests that frequently arise in child sexual abuse cases. *Id.* at 352. Expert testimony can assist the jury in understanding behavior of a sexual abuse victim that may seem inconsistent with the jury's preconceptions. *Id.* at 362.

Defendant argues the prosecution's expert witness overstepped the guidelines in *Peterson* and "vouched" for the veracity of the victim. We disagree. In *Peterson, supra* at 373, the Court held that the prosecution can, in its case in chief, introduce relevant evidence to explain the post-incident behavior of sexually abused children. In addition, the prosecution can apply the reasonable inferences from the expert's testimony to the facts of its case. *Id.* at 373. However, the expert may not testify that a particular victim's behavior is consistent with that of a sexually abused child unless the defendant has attacked the post-incident behavior of the particular victim. *Id.* at 373-374. Otherwise, to the jury, "recognizing the awesome dilemma of whom to believe, an expert will often represent the only seemingly objective source, offering it a much sought-after hook on which to hang its hat." *Id.* at 374, quoting *Beckley, supra* at 721-722.

Applying the standard in *Peterson* to the instant case, the expert's testimony clearly falls within the scope of what is permissible. Tom Cottrell, a qualified expert in the area of child sexual abuse dynamics, testified in the prosecution's case-in-chief to explain certain behaviors that could have been misconstrued by the jury as inconsistent with that of an actual abuse victim: the delay in reporting the incident, the inconsistency in the date of the incident, and the victim's denial of the incident to her mother. Cottrell testified that he had never met the victim and his testimony was meant to help the jury understand the testimony it heard. Cottrell's testimony was presented in general terms never referring to the particular victim. Although the behavior on which he was questioned was specific to this particular case and victim, Cottrell's answers were in reference to hypothetical generalizations. As in *Peterson*, the jury may have "incorrectly construed" the victim's specific behavior and discounted the victim's credibility because of the delay and inconsistencies. Cottrell's testimony allowed the prosecutor to infer that the victim's behavior, if true, was consistent with sexual abuse victims. Cottrell, however, never made an assertion that the victim was being truthful.

Furthermore, we note that even if, as defendant argues, the questioning was so specific on redirect as to identify this particular victim and constitute Cottrell's impermissible vouching for the victim's veracity, the questioning was still appropriate. Defendant attacked the post-incident behavior of the victim on cross-examination. In fact, defendant's overall theory of the case was that the victim was fabricating this incident and was unbelievable. As evidence of his theory, defendant attempted to discredit the victim's post-incident behavior before the expert even testified and while he was actually doing so. The victim's delay in reporting the incident to anyone, changing the date of the incident, and telling her mother that nothing had happened were all used by defendant to support his theory that the victim was untruthful. Under *Peterson, supra* at 352-353, the prosecution was allowed to introduce an expert to "testify with regard to the consistencies between the behavior of the particular victim and other victims of child sexual abuse to rebut an attack on the victim's credibility." Again, we emphasize in this case that Cottrell testified that he had not met the victim and was testifying only to help the jury understand the behavior of sexually abused children. Even if Cottrell's testimony was so specific that it did cross into verifying the victim's veracity, the testimony was permissible to rebut defendant's attack on the victim's credibility.

We find, after reviewing the record, there is no indication that the trial court committed an outcome-determinative plain error with respect to Cottrell's testimony.

Affirmed.

/s/ Bill Schuette
/s/ Brian K. Zahra
/s/ Donald S. Owens