

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES EDWARD TAYLOR,

Defendant-Appellant.

UNPUBLISHED

May 12, 2005

No. 254888

Wayne Circuit Court

LC No. 03-013048

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES EDWARD TAYLOR,

Defendant-Appellant.

No. 254889

Wayne Circuit Court

LC Nos. 03-013047;

03-011413

Before: O'Connell, P.J., and Markey and Talbot, JJ.

PER CURIAM.

Defendant was charged with a total of thirteen offenses in three separate files, which were consolidated for trial before a jury. In LC No. 03-011413, he was convicted of three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a), and two counts of second-degree criminal sexual conduct, MCL 750.520c(1)(a). In LC No. 03-013047, he was convicted of six counts of first-degree CSC, MCL 750.520b(1)(a) and (b). In LC No. 03-013048, he was convicted of two counts of third-degree CSC, MCL 750.520d(1)(a).¹ He was sentenced to concurrent prison terms of thirty to sixty years for each first-degree CSC conviction, ten to fifteen years for each second-degree CSC conviction, and ten to fifteen years for each third-degree CSC conviction. He appeals by right. We affirm.

¹ LC No. 03-011413 relates to charges involving TH; LC No. 03-013047 relates to charges involving TT; and LC No. 03-013048 relates to charges involving FT.

I. Basic Facts

Defendant, age thirty-two at the time of his 2004 trial, was convicted of sexually abusing FT, age seventeen at the time of trial, TT, age fifteen at the time of trial, and TH, age twelve at the time of trial. FT is defendant's former girlfriend's cousin, TH is defendant's former girlfriend's daughter, and TT is defendant's niece. The charged incidents occurred between 1999 and 2003.

Sandra Alexander, FT's mother, testified that, at some unspecified time, defendant moved into her home with his girlfriend, Natasha Hart, and Hart's daughter, TH.² At the time, FT and several other family members also lived in the home. According to FT, defendant had sexual intercourse with her twice. In December 2000, when FT was thirteen years old, she was awakened at approximately 3:00 a.m. by defendant's hands in her underwear. Defendant then climbed on top of her, put his hand over her mouth, put his penis in her vagina, and ejaculated inside her. Afterward, defendant told her that she "better not tell nobody." During the second incident, which occurred in January 2001, FT was sleeping on the floor when defendant kicked her and directed her to remove her pajama pants. When FT refused, defendant removed her clothing, had sexual intercourse with her, and ejaculated inside her. FT was subsequently treated for a venereal disease ("VD"). FT testified that she had a child in October 2001, and that defendant was the only person with whom she ever had sexual intercourse. In a statement made to the police, defendant admitted that he fathered FT's child. Deoxyribonucleic acid (DNA) testing confirmed that defendant is the biological father of FT's child.

Hart testified that, at some point, she, defendant, and TH moved from FT's mother's residence. TH, who referred to defendant as "dad," testified that after moving from FT's house, defendant sexually abused her on numerous occasions. According to TH, when she was eleven years old, defendant had sexual intercourse with her. TH indicated that on other occasions defendant penetrated her digitally, touched and sucked her breasts, and made her suck his nipple. She indicated that defendant would "get mad at [her]" when she told him to stop and threatened to hurt her or her mother if she told anyone. Eventually, defendant left the house after having a physical altercation with Hart.

Defendant subsequently moved into his mother's house. At the time, TT, who is the daughter of defendant's deceased brother, also lived in the home. TT testified that, when she was about twelve years old, defendant woke her during the night, touched her all over, climbed on top of her, and penetrated her vagina with his penis. Afterward, defendant threatened to kill her if she told anyone. TT indicated that defendant penetrated her vagina with his penis four additional times, and penetrated her anus with his penis once. In late 2003, TT visited an aunt in Indiana, where she was diagnosed with a venereal disease. When she returned to her grandmother's house approximately eight months later, defendant had moved out; however, TT testified that defendant would occasionally spend the night and sexually abused her when he did.

² Aside from Hart's daughter, TH, who is from a previous relationship, Hart has three children with defendant.

TT contracted a second venereal disease. TT testified that defendant was the only person with whom she had sexual relations.

II. Joinder

Defendant first argues that the trial court improperly consolidated the three separate cases into one trial in violation of MCR 6.120(B). We disagree.

This Court reviews de novo whether joined offenses are related as a matter of law and thus eligible for joinder. MCR 6.120(B); *People v Tobey*, 401 Mich 141, 153; 257 NW2d 537 (1977). If the offenses are eligible for joinder, this Court reviews the trial court's decision regarding joinder for an abuse of discretion. See *id.*; *People v Duranseau*, 221 Mich App 204, 208; 561 NW2d 111 (1997).

MCR 6.120(A) provides that “[t]wo or more informations or indictments against a single defendant may be consolidated for a single trial.” But MCR 6.120(B) provides that a criminal defendant has the right to severance of unrelated offenses for separate trials. MCR 6.120(B) provides that two offenses are related if they are based on

- (1) the same conduct, or
- (2) a series of connected acts or acts constituting part of a single scheme or plan.

In this case, the sexual crimes defendant committed against the three victims were related for purposes of MCR 6.120 as part of a single scheme or plan to engage in a sequence of sexual contact with young girls whom he knew and had access to in his household. There was evidence that defendant sexually assaulted FT, the first victim, in her family's home, that he subsequently sexually assaulted TH while living in the same household with her and her mother, and that he thereafter left TH's residence, moved into his mother's residence where TT resided, and sexually assaulted TT. Defendant used the same methods to accomplish the sexual acts, including approaching the victims late at night and warning them not to tell anyone. Although defendant contends that the timeframe for the charges involving each victim was different, temporal proximity is not a requirement for establishing a single scheme or plan under MCR 6.120(B).

In addition, the three victims were similar in age when the assaults began (eleven, twelve, and thirteen), knew each other, and had a good relationship with defendant. As previously indicated, FT was defendant's girlfriend's cousin, TH was defendant's girlfriend's daughter, and TT was defendant's niece. In sum, the evidence sufficiently establishes that the individual acts committed against the three victims constituted part of a single scheme on defendant's part and, thus, were related.³

³ Defendant argues that the offenses were unrelated because they involved different victims, different times, and were committed at different locations. But defendant cites no authority for the proposition that these factors are determinative. “A party may not merely state a position and then leave it to this Court to discover and rationalize the basis for the claim.” *People v Griffin*,
(continued...)

Further, the trial court's decision to join the related charges for a single trial was not an abuse of discretion. There is no indication that the nature of the evidence or the number of charges created confusion or unfair prejudice. MCR 6.120(C). Each victim's individual testimony was sufficient to establish the elements of the offenses involving her. The counts were separately delineated before trial in both the trial court's instructions and on the verdict form. In short, the manner in which the evidence was presented enabled the jury to distinguish the evidence and to apply the law for each offense. This is evidenced by the verdict in which the jury convicted defendant of the charged offenses involving TT and TH and convicted him of lesser offenses with respect to FT.

In addition, the parties' resources and the convenience of witnesses were served by joinder in this case. MCR 6.120(C). Moreover, if each case were tried separately, the evidence concerning each victim would have been admissible at each trial, as evidence of a common plan or scheme under MRE 404(b). *Duranseau, supra* at 208. Consequently, separate trials would have likely required repeated testimony from the prosecution's minor witnesses. Further, because evidence of the other offenses could have been admitted at separate trials under MRE 404(b), defendant's claim that joinder was prejudicial because the victims bolstered each other's testimony is without merit.⁴ In sum, the offenses were related such that joinder was appropriate, and the trial court did not abuse its discretion in consolidating the cases for a single trial.

III. Prosecutorial Misconduct

Next, defendant contends that he was denied a fair trial by numerous instances of prosecutorial misconduct. We disagree.

Because defendant failed to object to the prosecutor's conduct below, this Court reviews his unpreserved claims for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 752-753, 763-764; 597 NW2d 130 (1999). We will not find error requiring reversal if the prejudicial effect of the prosecutor's comments could have been cured by a timely instruction. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

A. Facts Not in Evidence

Defendant contends that the prosecutor argued facts not in evidence by stating that TT's aunt learned of the sexual abuse while TT was in Indiana, and that there was "no evidence" that TH's mother and defendant "had any problem getting along." The prosecutor concedes that there was essentially no evidence presented to support these statements.⁵

(...continued)

235 Mich App 27, 45; 597 NW2d 176 (1999).

⁴ For this reason, we also reject defendant's argument that the prosecutor engaged in misconduct during closing argument when she referred to the testimony of each victim being supportive of the other victims' testimony.

⁵ But in fact, there was evidence that TH's mother and defendant had a physical altercation in 2003. In addition, TT's aunt testified that, while in Indiana, TT was diagnosed with a venereal disease but, upon questioning, TT "was very evasive."

Although the prosecutor improperly argued facts that were not supported by the evidence, *People v Stanaway*, 446 Mich 643, 686; 521 NW2d 557 (1994), defendant has not demonstrated that his substantial rights were affected. *Carines, supra*. The remarks involved only a brief portion of the prosecutor's closing and rebuttal arguments, were of comparatively minor importance considering the totality of the evidence against defendant, and were not so inflammatory that defendant was prejudiced. Moreover, the trial court instructed the jurors what constituted evidence, and that the case should be decided on the basis of the evidence. The instructions were sufficient to dispel any possible prejudice. *People v Long*, 246 Mich App 582; 588; 633 NW2d 843 (2001). Juries are presumed to follow their instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). Consequently, reversal is not warranted on the basis of this unpreserved issue.

Defendant also contends that the prosecutor argued facts not in evidence when she "held up" and referred to a "Kids' Talk" interview tape that was not admitted into evidence. Although the actual videotape was not admitted at trial, its existence was part of the evidence and references to the videotape were made throughout trial. TH, her mother, and a Sex Crimes Unit police officer testified that because of her young age, TH was interviewed by Kids' Talk, and the interview was videotaped. The officer testified that the videotape that the prosecutor "held up" was the actual Kids' Talk videotape containing TH's interview. This claim is without merit.

B. Vouching

We also reject defendant's claim that the prosecutor impermissibly vouched for TH by referring to the Kids' Talk interview tape. A prosecutor may not vouch for the credibility of a witness by conveying that she has some special knowledge that the witness is testifying truthfully. *People v Knapp*, 244 Mich App 361, 382; 624 NW2d 227 (2001). But viewed in context, the prosecutor did not convey to the jury that she had special knowledge that TH was testifying truthfully. Rather, when referring to the videotape, the prosecutor was in the midst of urging the jurors to evaluate the evidence and to consider that the victims were consistent about the basic details of the incidents during the numerous times and places they told their stories. A prosecutor is free to argue the evidence and all reasonable inferences arising from it as they relate to her theory of the case. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). The prosecutor's remarks were not improper.

C. Denigration of Defendant

We also reject defendant's claim that the prosecutor impermissibly denigrated his character during closing argument when she stated that defendant "has a sexual interest in children." Although a prosecutor "must refrain from denigrating a defendant with intemperate and prejudicial remarks," *id.* at 283, the challenged remark here simply conveyed the prosecutor's contention that the evidence demonstrated defendant "has a sexual interest in children." In view of the evidence, her argument was reasonable. A prosecutor is not required to phrase arguments and inferences in the blandest possible terms. *People v Ullah*, 216 Mich App 669, 678; 550 NW2d 568 (1996). Thus, the prosecutor's remark was not improper.

D. Improper Argument

Defendant also makes a general claim that during rebuttal argument, the prosecutor made several remarks that improperly urged the jury to “speculate” that he had a venereal disease. But viewed in context, the challenged argument was plainly focused on refuting both defense attorneys’ assertions made during closing arguments that there was no evidence that defendant had a venereal disease. The defense attorneys argued that defendant’s girlfriend did not testify that he infected her with a venereal disease, that the police failed to administer a blood test to determine if defendant had a venereal disease, and that defendant’s penicillin prescription could have been prescribed to treat diseases other than a venereal disease.

In response, the prosecutor argued that during their closing arguments, the defense attorneys assumed that a venereal disease could be detected with a blood test and that it would be virtually impossible to determine if or when defendant sought treatment and to obtain any corresponding medical records. She further argued that defendant’s girlfriend was never asked whether defendant infected her with a venereal disease, but that “maybe” she did contract a venereal disease from defendant. Given the defense attorneys’ remarks, the prosecutor’s brief, the responsive remarks were not improper. Otherwise improper prosecutorial remarks might not require reversal if they address issues raised by defense counsel. *People v Duncan*, 402 Mich 1, 16; 260 NW2d 58 (1977). Consequently, this claim does not warrant reversal.

IV. Jury Instructions

Lastly, defendant claims that he was prejudiced by the court’s “giving a confusing, incomplete, and erroneous reasonable doubt instruction.” But the record reflects that both of defendant’s attorneys were satisfied with the trial court’s instruction. Because any objection was waived, there is no error to review.⁶ *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000); *People v Ortiz*, 249 Mich App 297, 311; 642 NW2d 417 (2001).

We affirm.

/s/ Peter D. O’Connell
/s/ Jane E. Markey
/s/ Michael J. Talbot

⁶ If we were to review this claim, we would find the trial court’s reasonable doubt instruction when examined as a whole leaves no doubt that the jury understood the prosecutor’s burden of proof and what constituted a reasonable doubt. See *People v Hubbard (After Remand)*, 217 Mich App 459, 487; 552 NW2d 493 (1996) (“[t]o pass scrutiny, a reasonable doubt instruction, when read in its entirety, must leave no doubt in the mind of the reviewing court that the jury understood the burden that was placed upon the prosecutor and what constituted a reasonable doubt”).