

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
October 10, 2013

v

TARIQUE HOUSSAINE,
Defendant-Appellant.

No. 310646
Wayne Circuit Court
LC No. 11-008230-FH

Before: BECKERING, P.J., and O'CONNELL and SHAPIRO, JJ.

PER CURIAM.

Defendant, Tarique Houssaine, appeals as of right his bench-trial conviction for second-degree criminal sexual conduct, MCL 750.520c(1)(a). The trial court found that defendant sexually molested a six-year-old girl when she was playing in her back yard; the court sentenced defendant to five years of probation, with the first 12 months to be served in jail. We affirm.

On appeal, defendant argues that the trial court erred by finding that the victim, who was seven years old at the time of trial, was competent to testify. We disagree. We review the trial court's determination of witness competency for abuse of discretion. *People v Watson*, 245 Mich App 572, 583; 629 NW2d 411 (2001). "An abuse of discretion occurs when the trial court chooses an outcome falling outside the range of principled outcomes." *People v Portellos*, 298 Mich App 431, 453; 827 NW2d 725 (2012).

Michigan courts presume that all witnesses are competent to testify. *Watson*, 245 Mich App at 583; see also MRE 601. This presumption may be rebutted on a "showing that the witness does not have the capacity or sense of obligation to testify truthfully or understandably." *People v Coddington*, 188 Mich App 584, 597; 470 NW2d 478 (1991). The test of witness competency does not focus on whether a witness can distinguish right from wrong but, rather, on whether a witness has that requisite capacity and sense of obligation to testify truthfully and understandably. *People v Breck*, 230 Mich App 450, 457; 584 NW2d 602 (1998) (quotation omitted). Once the trial court determines that a child witness is competent to testify, "a later showing of the child's inability to testify truthfully reflects on credibility, not competency." *Watson*, 245 Mich App at 583 (quotation omitted).

Before testifying, the victim was examined to determine her competency to testify. When asked if the statement that "it was raining in [the] room right now" was a lie, the victim initially answered that she did not know but then stated that it would not be true. When asked if

the statement that the prosecutor was “wearing all purple” was a lie, the victim stated that it would not be true and identified that the prosecutor was wearing black. The victim stated that she did not know the difference between the truth and a lie but acknowledged that it was bad to lie. The victim indicated that she understood what the trial court meant if it asked her to promise to tell the truth. The trial court found the victim competent, and she took an oath to testify truthfully.

Based on this record, we conclude that the victim was presumed competent to testify and that no showing was made to rebut that presumption. The victim’s responses to the questions regarding the color of the prosecutor’s clothing and whether it was raining inside the courtroom demonstrated that the victim understood whether a statement was truthful. The fact that she could not articulate the difference between a truth and a lie is not dispositive, particularly in light of her youth and the fact that English was not her native language. See *People v Norfleet*, 142 Mich App 745, 748; 371 NW2d 438 (1985) (“We expect that an adult would have difficulty in articulating an explanation of the difference between right and wrong and between telling the truth and telling a lie. . . . We believe it apparent that the negative answers to [questions regarding articulation of that difference] are more attributable to a realization that [the child witness] could not explain those differences than to an absence of a sense of right and wrong.”). The victim’s acknowledgement that lying was bad and her indication that she understood what it meant to promise to tell the truth demonstrated awareness of an obligation to testify truthfully. The record does not give any indication that the victim lacked the capacity or the sense of obligation to testify truthfully and understandably. We conclude that the trial court’s decision was within the range of principled outcomes and, therefore, not an abuse of discretion. See *Portellos*, 298 Mich App at 453.

Defendant argues that the victim’s subsequent inconsistent testimony demonstrates that she was not competent to testify. We disagree. Once the trial court is satisfied that a child witness is competent to testify, later inconsistencies in that witness’s testimony reflect on credibility, not competency. *Watson*, 245 Mich App at 583. Thus, the fact that the witness initially testified that she “forgot” where defendant touched her, before later testifying that he touched her underneath the bottom part of her two-piece bathing suit, holds no relevance to the issue of competency.

Defendant also makes a bare allegation that the trial court violated his right to confrontation under the Sixth Amendment of the United States Constitution by permitting the victim to testify. First, this issue is not properly presented to the Court because defendant failed to raise the issue in his statement of questions presented. See *People v Albers*, 258 Mich App 578, 584; 672 NW2d 336 (2003); see also MCR 7.212(C)(5). Second, defendant fails to articulate an argument for how his right of confrontation was violated. Defendant’s failure to fully brief the issue constitutes abandonment of the issue. See *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998) (“An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority.”); *People v McPherson*, 263 Mich App 124, 136; 687 NW2d 370 (2004) (“The failure to brief the merits of an allegation of error constitutes an abandonment of the issue.”). Therefore, we need not address the merits of the argument. Regardless, we note that defendant’s argument lacks merit because the four requirements of the Confrontation Clause, as set forth in *People v Pesquera*, 244 Mich App 305,

309; 625 NW2d 407 (2001), quoting *Maryland v Craig*, 497 US 836, 845; 110 S Ct 3157; 111 L Ed 2d 666 (1990), were satisfied here. The victim testified in the courtroom at trial in the presence of defendant, face-to-face, she was competent to testify, she was subjected to cross-examination, and the trial court as the trier of fact was afforded the opportunity to observe her demeanor.

Affirmed.

/s/ Jane M. Beckering
/s/ Peter D. O'Connell
/s/ Douglas B. Shapiro