

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

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
April 10, 2014

v

TIMOTHY WARD JACKSON, a/k/a TIMOTHY  
WARD-JACKSON,

No. 310177  
Wayne Circuit Court  
LC No. 10-013476-FC

Defendant-Appellant.

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Before: JANSEN, P.J., and OWENS and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of three counts of first-degree criminal sexual conduct (“CSC-1”), MCL 750.520b(1)(a) (victim less than 13 years of age), and three additional counts of CSC-1, MCL 750.520b(1)(b)(iii) (coercion by use of authority). He was sentenced to concurrent prison terms of 25 to 37 ½ years for his three convictions under MCL 750.520b(1)(a), and 15 to 22 ½ years for two of his convictions under MCL 750.520b(1)(b)(iii). He was sentenced to a consecutive prison term of 15 to 22 ½ years for his remaining conviction under MCL 750.520b(1)(b)(iii). We affirm.

**I. BASIC FACTS AND PROCEDURAL HISTORY**

Defendant served as pastor of the Outreach Cathedral of Faith AOH Church of God (“the church”)<sup>1</sup> from 1999 until 2010. He was charged with six counts of CSC-1, arising from numerous alleged sexual penetrations of the victim while she was 12 and 13 years old. The victim had regularly attended the church with her family for many years. The victim’s mother, Yasharon Williams (“Williams”), testified that her family had joined the church in 1999 when the victim was approximately three years old.

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<sup>1</sup> At most relevant times, the church was located in a building on Livernois Avenue in Detroit. Defendant’s private office was located in the basement of the Livernois Avenue building, in a backroom adjacent to the fellowship hall. There was a period between August 2009 and June 2010 when the church was located in a building on Seven Mile Road in Detroit. But in June 2010, the church moved back to its former Livernois Avenue location.

Williams became increasingly active in the church over the years, eventually rising to the position of assistant pastor. As an assistant pastor, Williams worked closely with defendant. She attended church with the victim at least three or four times each week, often on Tuesdays, Wednesdays, and Sundays. By the time the victim was eight or nine years old, she was involved in the church's choir and youth programs. At the age of eleven, the victim became a "youth nurse," responsible for attending to defendant before and after services, giving him water or tea, and giving him "towels to wipe his face." In this position, the victim spent a great deal of time with defendant and was often alone with him in his office.

At some point, the victim began having problems at school and got into trouble with some other girls. Williams asked defendant whether he would be willing to become a mentor for her daughter, and defendant agreed. The parties ultimately agreed that defendant would pick up the victim from school and mentor her at the church during the late afternoons and early evenings. As a consequence, the victim began spending even more time alone with defendant at the church.

In early June 2009, defendant and Williams took the victim to a church convention in Mobile, Alabama. Defendant told Williams that he needed the victim to be his "on-call" assistant at the convention; this would require the victim to be alone with defendant in his hotel room at various times. Williams believed that there was "nothing out of the ordinary" about this request. During their first evening in Mobile, the victim was alone with defendant in his hotel room for an "hour and a half" or "two hours." Williams was already asleep by the time the victim returned from defendant's room; Williams never asked the victim what had happened in defendant's room. When school resumed in the fall of 2009, defendant resumed picking up the victim after school and taking her to the church to mentor her. According to Williams, the victim spent a great deal of time with defendant, both during her mentoring sessions and before and after church services.

The victim testified that while in Mobile, Alabama, defendant had asked her to come to his hotel room "to watch a movie." The victim testified that, once she arrived in defendant's room, defendant asked her to massage his back and legs. Defendant then instructed the victim to "[g]et in the bed" and "[t]ake off your clothes." The victim testified that she complied, even though she felt "[u]ncomfortable." According to the victim, defendant then disrobed and "got on top of [her]." The victim testified that defendant "tried to inject his penis into my vagina." She stated that she could feel defendant's penis touching the outside of her vagina. She attempted to scratch or kick defendant but he "kept trying." The victim clarified that defendant's penis never actually penetrated her vagina, and he thereafter stopped trying. The victim did not tell her mother because she was scared and did not believe that Williams, who held a high position in the church, would believe such an allegation concerning defendant.

Later in June 2009, after returning to Michigan, the victim was alone with defendant in his office at the church. The victim testified that she did not want to be alone with defendant at the church, but that she had gone to the church because her mother wanted her to. The victim testified that after she sat down on the couch in defendant's office, defendant "takes out his penis and tells me to kiss it." According to the victim, defendant then clarified that he wanted her to "suck it." The victim testified that she complied and began sucking defendant's penis. She stated that she did not want to perform oral sex on defendant and "really didn't know what I was

doing”; however, she did it anyway. After the oral sex had concluded, defendant directed the victim to lie on the floor and he “inject[ed] his penis into my vagina.” The victim stated that she could feel defendant’s penis penetrate her vagina, unlike the time in Alabama when defendant’s penis only touched the outside of her genitals. The victim believed that defendant penetrated her vagina on two separate occasions that day but was not certain. According to the victim, defendant thereafter directed her to perform oral sex on him again. Defendant then told the victim to “wash up” in the bathroom adjoining his office. Defendant similarly “washed up” and wiped himself off with a towel before putting on his clothes. The victim testified that she was again afraid to tell her mother because she did not think Williams would believe her.

Sometime later that summer, but before the victim’s thirteenth birthday, the victim was again alone with defendant in his office at the church. According to the victim, defendant walked into the hallway to “make sure everything is cool,” came back into his office, and “pull[ed] . . . his penis out [of] his shorts.” Defendant then put his penis in the victim’s mouth and made her perform oral sex on him. Afterward, defendant told the victim to remove her clothes and to “[g]et on the floor.” The victim testified that defendant got on the floor next to her and “inject[ed] his penis into my vagina.”

The victim turned 13 years old on August 19, 2009. Shortly thereafter, defendant asked Williams to send the victim over to his house to help him with cleaning and household chores. When the victim arrived at defendant’s home, defendant’s wife and children were not present. The victim remembered that there was a green comforter on defendant’s bed. The victim testified that, after she had cleaned the kitchen, defendant directed her to “[s]uck his penis” and she complied. The victim stated that defendant then put his penis “[i]n [her] vagina.”

According to the victim defendant often had sex with her in his office at the church in the ensuing months. Defendant frequently asked to “stick [his] penis into [her] vagina real quick before [the parishioners] come down here and start knocking on my [office] door.” Defendant also frequently asked the victim to perform oral sex on him. The victim no longer tried to resist defendant because she “was used to it.” Defendant testified that she always complied with defendant’s requests and that the sexual interactions occurred regularly for many weeks. The victim testified that she again had sex with defendant during a youth conference in Ohio in early July 2010, when the other children were swimming in the hotel’s swimming pool. The victim believed that defendant would retaliate against her if she did not comply with his sexual demands.

The victim stated that she last had sex with defendant in his office on the morning of Sunday, August 1, 2010. She testified that she had just entered defendant’s office when “he pulled out his penis and asked me [for] a quick one.” The victim testified that, after defendant put his penis in her mouth and vagina, he ejaculated on his hand and wiped the semen on a white towel.<sup>2</sup>

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<sup>2</sup> During her interview with the police, the victim apparently stated that defendant had not ejaculated on August 1, 2010. At trial, defense counsel impeached the victim with her statement

Following the first service on August 1, 2010, the victim went out to the parking lot to sit in her mother's air-conditioned car and listen to music. The victim's aunt, Jacklyn Price ("Price"), was walking across the parking lot and got into the car to speak with her. The victim was 13 years old at the time and was getting ready to start high school in the fall. Price observed that the victim had been spending a great deal of time with defendant and decided to tell her about an old friend named Latoya Newsome ("Newsome"). Price told the victim that she had recently received a Facebook message from Newsome, who had been in some type of relationship with defendant several years earlier.<sup>3</sup> Price also insinuated that she was involved in a prior relationship, telling the victim, "[There] were some things I experienced growing up and I felt bad about, but I never said anything about it." Price informed the victim that she should tell an adult if anyone had been touching her inappropriately.

The victim then began to cry and told Price about her sexual interactions with defendant. Although the victim did not initially identify defendant by name, she pointed to him when he later peered out the front door of the church. The victim told Price that the last time defendant had sexually penetrated her was that very morning. Price explained that the victim's sexual interactions with defendant were inappropriate. The victim began to feel "guilty" and "violated" after her conversation with Price.

Following this conversation, the victim went back inside and found defendant in the upstairs church office. The victim asked defendant whether he had been in a prior relationship with Price's friend, but defendant stated, "[T]hat's a lie from back in the day." Defendant then got "[o]n his knees" and "begg[ed]" the victim not to tell the truth about what had happened between them.

Price went inside the church and found Williams; she told Williams what the victim had revealed to her in the car. Williams became upset. Price and Williams began to look for the victim but could not find her. They then went upstairs and found the victim in the church office with defendant.<sup>4</sup> Williams and Price confronted defendant. According to Williams and Price, defendant "furious[ly]" denied touching the victim and "just kept repeating" that he had done nothing wrong. Williams told the victim to come out of the office immediately, but defendant apparently said "give me a minute." After further insistence by Williams, defendant stated, "Let's go downstairs into my office so we won't make a disturbance."

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to the police in this regard. Defense counsel also questioned the victim extensively concerning whether defendant had used a white towel or a colored towel.

<sup>3</sup> Price never specifically identified the details of this past relationship, but suggested that it may have been inappropriate in nature. Price testified that Newsome had stopped attending the church several years earlier. For many years, Price never knew why Newsome had left the church. Price knew only that Newsome was living overseas with her husband, who was in the military. Then, in 2010, Newsome and Price became friends on Facebook. Price testified that she became very concerned about defendant's interactions with the victim following her online communications with Newsome.

<sup>4</sup> The upstairs church office is different from the pastor's office in the basement of the church.

After going downstairs to defendant's office, Williams and Price once again confronted defendant with the allegations that he had touched the victim. Defendant again denied the allegations. Defendant's wife then came into the office but defendant asked her to leave. According to Williams, the victim began to cry and shouted, "Get me out of this church. . . . [H]e did it to me." Price took the victim out to the car. Williams turned her church keys over to defendant, went out to her car, and left with the victim. They have not been back to the church since that day.

The next day, Williams was upset and did not know what to do. She asked the victim to tell her exactly what had happened. The victim told Williams that defendant had first touched her inappropriately in June 2009, during the trip to Mobile, Alabama. The victim described the other sexual acts as well. Williams had trusted defendant and had "looked up to him as a spiritual father." She was in shock.

Williams and her husband took the victim to the Detroit Police Department and made a report. On the recommendation of the police, Williams took the victim to the hospital to be examined. Julie Goddard-Lyons ("Goddard-Lyons"), a registered nurse and forensic examiner with the Wayne County SAFE Program, interviewed and examined the victim at Detroit Receiving Hospital on August 3, 2010. Goddard-Lyons found signs of injury on the victim's genitalia including "circumferential redness of the hymen" and "some well healed tears to the hymen." She also found an injury and open abrasion near the posterior region of the labia minora. Among other things, Goddard-Lyons collected vaginal and labial swabs from the victim, placed them in a rape kit, and sealed the kit. Goddard-Lyons believed that the victim's injuries were consistent with her accounts of sexual contact with defendant.

The victim was also interviewed by officers from the Detroit Police Department sex crimes unit. The victim told the police officers that she had been sexually assaulted both at the church and in the victim's home. The victim specified the location of the assaults. Among other things, she described a rolling chair in defendant's office, a rug on which she had been assaulted, and a green comforter that was on defendant's bed at the time of one of the assaults. She further described various towels that defendant had used to "clean up" after having sex with her.

Police officers executed search warrants at the church and defendant's home on August 5, 2010. At defendant's home, officers seized bedding and took photographs. In defendant's office at the church, police found several towels; some of the towels were taken into evidence. The police did not find a green comforter at defendant's home. Nor did police seize the rug from defendant's floor because it was too large. Pursuant to an additional search warrant, police obtained an oral swab from defendant for the purpose of DNA testing. The oral swab was transported to the Michigan State Police for analysis. Police also took photographs of defendant's body, legs, and thighs pursuant to a search warrant. One of these photographs, later admitted into evidence at trial, depicted a distinguishing black birthmark on defendant's inner thigh, near his scrotum, which the victim had described with some detail during her statement to the police.

Defendant's DNA was contained in semen stains found on a bed sheet and one of the towels seized by the police. However, none of the items seized by the police contained the victim's DNA. Nor were there any sperm cells found on the vaginal and labial swabs collected

from the victim. The Michigan State Police forensic analyst who testified at trial did not find this unusual. She testified that “[t]he vagina is a very acidic environment and it will break down any kind of foreign items.” In addition, she noted that the victim had likely showered between the last alleged sex act with defendant on August 1, 2010, and the time the swabs were collected on August 3, 2010.

At trial, the defense presented various witnesses, including several former “youth nurses,” all of whom testified that they had had only positive experiences with defendant, had never seen defendant having sex at the church, and had never noticed any inappropriate contact between defendant and the victim. Defense counsel elicited considerable evidence that defendant’s office door did not lock and that defendant’s office was adjacent to the basement fellowship hall, where parishioners routinely congregated. It was defense counsel’s theory that, if defendant had sexually assaulted the victim in his basement office, other parishioners would have heard a commotion or noticed what was happening. Defense witnesses Gerald Gordon (“Gordon”) and Eddie Buford (“Buford”) testified that the door of defendant’s office did not close all the way and did not lock. Gordon and Buford maintained that the people in the fellowship hall would have heard a commotion in defendant’s office if defendant had sexually assaulted the victim as she claimed. Gordon and Buford also testified that, as defendant’s “armor bearers,” they were in defendant’s immediate presence at most times and had never seen defendant inappropriately touch the victim. However, both men admitted that there were various times when they were not with defendant.

Defendant testified that he had never engaged in sexual intercourse or fellatio with the victim. He maintained that he did not have sexual intercourse with the victim in his church office on August 1, 2010, or at any other time. He further insisted that he had not engaged in sexual contact with the victim during the church trip to Mobile, Alabama, or the youth trip to Ohio. In fact, he claimed that his son Thomas had stayed with him in his hotel room during the trip to Ohio because Thomas was afraid to go swimming in the hotel’s pool with the other children. Defendant explained that the church believes in “expressing the joy that’s in us,” which requires physical movement such as jumping, clapping, and even running during church services. Accordingly, defendant explained that he sweats profusely and often has to change his clothes and wipe himself down with towels in his office after services. As a “youth nurse,” it was the victim’s job to bring defendant the towels that he needed.

Defendant claimed that one day, after having “washed up” following a service at the Seven Mile Road location,<sup>5</sup> the victim walked into his office unannounced as he was sitting on his couch relaxing in the nude. Defendant testified that he yelled, “Get outta here! Get outta here!” and covered himself with a towel. Defendant testified that, after that incident, he began requiring Gordon and Buford, his “armor bearers,” to stand guard outside his office door to prevent people like the victim from walking in. Defendant testified that he never mentioned this

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<sup>5</sup> This alleged incident occurred when the church was located in the building on Seven Mile Road in Detroit. It appears from the record that the church moved to this building in August 2009. The church returned to its former location on Livernois Avenue in June 2010.

incident to Williams. Defendant claimed that the victim must have seen his distinguishing birthmark during this incident.

Defendant testified that he was “[v]ery hurt” and “very disappointed” by the victim’s allegations. He believed that Price had fabricated the allegations against him and had planted the allegations in the victim’s mind. Defendant testified that Price was upset with him because he had refused to preside over her marriage to a non-Christian man. Defendant also claimed that the victim “had a pattern of lying.” Defendant explained that he and his wife had occasionally engaged in sexual intercourse in his office at the church; this was most likely why his semen was present on one of the towels seized by the police.

The jury convicted defendant of all six counts of CSC-1 charged in the information. Defendant was sentenced to concurrent prison terms of 25 to 37 ½ years for his three convictions under MCL 750.520b(1)(a), and 15 to 22 ½ years for two of his convictions under MCL 750.520b(1)(b)(iii). He was sentenced to a consecutive prison term of 15 to 22 ½ years for his remaining conviction under MCL 750.520b(1)(b)(iii).<sup>6</sup>

## II. FAIR CROSS-SECTION

Defendant argues that the circuit court denied his right to a fair trial by failing to guarantee that he was tried by a jury drawn from a fair cross-section of the community. We disagree.

To properly preserve a challenge to the composition of the jury venire, a party must raise the issue before the jury is empanelled and sworn. *People v Taylor*, 275 Mich App 177, 184; 737 NW2d 790 (2007). Defendant made no objection regarding the composition of the venire in this case; his argument is therefore unpreserved. We review unpreserved fair-cross-section claims for plain error affecting the defendant’s substantial rights. *Id.*; see also *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Defendant has failed to establish that African-Americans were underrepresented in his venire as the result of systematic exclusion. “The Sixth Amendment of the United States Constitution guarantees a defendant the right to be tried by an impartial jury drawn from a fair cross-section of the community.” *People v Bryant*, 491 Mich 575, 595; 822 NW2d 124 (2012). “To establish a prima facie violation of the fair cross-section requirement, a defendant must show that a distinctive group was underrepresented in his venire or jury pool, and that the underrepresentation was the result of systematic exclusion of the group from the jury selection process.” *People v Smith*, 463 Mich 199, 203; 615 NW2d 1 (2000); see also *Duren v Missouri*, 439 US 357, 364; 99 S Ct 664; 58 L Ed 2d 579 (1979).

Defendant, an African-American, complains that there was only one African-American on his petit jury. “There is no dispute that African-Americans . . . are a distinct group in the

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<sup>6</sup> This consecutive sentence was properly imposed. See *People v Ryan*, 295 Mich App 388, 403-409; 819 NW2d 55 (2012).

community for the purposes of determining whether there is a violation of the Sixth Amendment's fair-cross-section requirement." *Bryant*, 491 Mich at 598. However, criminal defendants are not entitled to a petit jury of any particular composition. *Taylor v Louisiana*, 419 US 522, 538; 95 S Ct 692; 42 L Ed 2d 690 (1975). The relevant question is not whether African-Americans were underrepresented on defendant's petit jury, but whether they were underrepresented in the venire. See *Smith*, 463 Mich at 203.

Defendant does not provide any indication of the racial makeup of his venire. Nor does he present any record evidence to suggest that African-Americans were underrepresented in the venire as the result of systematic exclusion.<sup>7</sup> See *Taylor*, 275 Mich App at 184. "Because defendant has not met his burden of showing either that African-Americans were underrepresented in his venire, or that any underrepresentation was due to systematic exclusion, he has not established a plain error affecting his substantial rights." *Id.* at 184-185.

### III. PRICE'S CHALLENGED TESTIMONY

Defendant next argues that the circuit court erred by allowing the introduction of improper character evidence. In particular, defendant argues that Price's testimony concerning his prior relationship with Newsome constituted inadmissible bad-acts evidence under MRE 404(b). Again, we disagree.

Defense counsel timely objected to the admission of the allegedly improper evidence. Accordingly, this issue is preserved for appellate review. MRE 103(a)(1); *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). Preserved evidentiary issues are reviewed for an abuse of discretion. *People v Mahone*, 294 Mich App 208, 212; 816 NW2d 436 (2011). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). Preliminary questions of law, such as whether a rule of evidence or statute precludes the admission of the evidence, are reviewed de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

Price's testimony did suggest that defendant had engaged in some type of sexual relationship, possibly inappropriate in nature, with Newsome in the past. Price also insinuated that she, herself, may have been involved in a prior relationship with defendant. But these challenged portions of Price's testimony were vague and unspecific. The prosecutor argued that Price's testimony did not constitute prior bad-acts evidence under MRE 404(b) because, among other things, (1) it did not specifically identify any particular acts attributable to defendant, and

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<sup>7</sup> Defendant cites a report by the National Center for State Courts ("NCSC"), dated August 2, 2006, concerning the process of jury selection in Michigan's third judicial circuit. According to defendant, the report shows that there was an average disparity of 13.9 percent between the number of African-Americans in Wayne County venires and the overall adult African-American population of Wayne County in 2004 and 2005. We note that the NCSC report is not part of the record on appeal. Moreover, the NCSC report does not establish that the underrepresentation of African-Americans in Wayne County venires is the result of systematic exclusion.

(2) both Price and Newsome were older than the age of consent at the time of the alleged relationships. The circuit court agreed with the prosecutor and overruled defendant's objections. The court also denied defendant's motion for a mistrial on the same grounds.

We conclude that, although Price's testimony did arguably refer to prior acts by defendant, the testimony was nonetheless admissible under the res gestae exception. MRE 404(b) does not only apply to evidence of "crimes" and "wrongs." It also applies to evidence of "acts." Although the challenged portions of Price's testimony were vague and unspecific, and did not identify any particular crimes or wrongdoings by defendant, Price did allude to defendant's past relationships with her and Newsome. Any such past relationships were certainly "acts" within the meaning of MRE 404(b)(1). Thus, we conclude that the challenged portions of Price's testimony did constitute other-acts evidence within the contemplation of MRE 404(b). See *People v Hawkins*, 245 Mich App 439, 448 n 12; 628 NW2d 105 (2001) (assuming for the sake of analysis that the challenged testimony, albeit general and indirectly applicable to the defendant himself, constituted evidence of other bad acts by the defendant).

Nevertheless, it is well settled that "evidence that is admissible for one purpose does not become inadmissible because its use for a different purpose would be precluded." *People v VanderVliet*, 444 Mich 52, 73; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). Stated another way, if testimony is admissible for one purpose, "[t]he fact that . . . [it] also necessarily constitutes evidence of a separate crime, wrong, or act . . . does not alone bring the proof within the compass of MRE 404 preclusion." *People v Hall*, 433 Mich 573, 583; 447 NW2d 580 (1989) (opinion by BOYLE, J.). Under the res gestae principle, parties may elicit testimony that is necessary to allow the jury to hear the "complete story," even if that testimony incidentally describes the commission of another crime or wrong. *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978). "[I]t is essential that prosecutors and defendants be able to give the jury an intelligible presentation of the full context in which disputed events took place." *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996). This res gestae principle forms an exception to the general rule of MRE 404(b). *People v Robinson*, 128 Mich App 338, 340; 340 NW2d 303 (1983).

The jury was entitled to know why Price decided to ask the victim whether she had been inappropriately touched. Had the jury not been informed of the impetus for Price's conversation with the victim on August 1, 2010, the remainder of Price's testimony would have been even more confusing. Although Price's testimony incidentally referred to other prior acts by defendant, it was necessary to explain the sequence of events leading up to Price's conversation with the victim, to put in context the remainder of Price's testimony, and to allow the jury to hear the "complete story." *Delgado*, 404 Mich at 83; see also *Sholl*, 453 Mich at 741. We conclude that the challenged portions of Price's testimony were admissible under the res gestae exception, even though they referred to prior acts by defendant.<sup>8</sup>

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<sup>8</sup> We note that defendant could have requested a limiting instruction directing the jurors not to use the challenged portions of Price's testimony for character or propensity purposes. *VanderVliet*, 444 Mich at 75.

We also conclude that, because the challenged portions of Price’s testimony were admissible under the res gestae exception, the prosecution was not required to provide notice of its intent to present the evidence pursuant to MRE 404(b)(2). If the prosecution intends to present other-acts evidence in a criminal case, it “shall provide reasonable notice in advance of trial, or during trial if the court excuses pretrial notice on good cause shown, of the general nature of any such evidence it intends to introduce at trial and the rationale . . . for admitting the evidence.” MRE 404(b)(2). However, the prosecution is not required to provide notice under MRE 404(b)(2) when the evidence that it intends to present falls within the res gestae exception to MRE 404(b). Even if the prosecution had been required to provide notice under MRE 404(b)(2), the failure to provide such notice could not have prejudiced the defense, which was aware of Price’s testimony regarding defendant’s past relationships as early as the preliminary examination. See *Hawkins*, 245 Mich App at 455-456; see also *People v Sabin (After Remand)*, 463 Mich 43, 59 n 6; 614 NW2d 888 (2000).<sup>9</sup> We perceive no error.

#### IV. SUFFICIENCY OF THE EVIDENCE

Defendant argues that the prosecution presented insufficient evidence at trial to support his six convictions of CSC-1. We cannot agree.

No special steps are required to preserve a sufficiency-of-the-evidence claim for appeal. *Hawkins*, 245 Mich App at 457. We review the evidence in a light most favorable to the prosecution to determine whether any rational trier of fact could have found that the essential elements of the offense were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Defendant was convicted of three counts of CSC-1 under MCL 750.520b(1)(a), which prohibits a person from engaging in sexual penetration with another person who “is under 13 years of age.” The elements of CSC-1 under MCL 750.520b(1)(a) are that “(1) the defendant engaged in sexual penetration with another person and (2) the other person was under 13 years of age.” *People v Lockett*, 295 Mich App 165, 187; 814 NW2d 295 (2012). “Sexual penetration” includes, among other things, penile-vaginal intercourse and fellatio. MCL 750.520a(r). “[A]ny . . . intrusion, however slight, . . . into the genital . . . openings” is sufficient to prove penile-vaginal intercourse. *Id.*

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<sup>9</sup> We note that Price’s testimony did contain several hearsay statements concerning what the victim said to her during their conversation on August 1, 2010. Apart from Price’s account of the victim’s identification of defendant, MRE 801(d)(1)(C), most of these hearsay statements were inadmissible. Nonetheless, the victim, who testified at trial and was subject to vigorous cross-examination, provided an account of the conversation of August 1, 2010, that was nearly identical to Price’s account. The victim testified extensively concerning what she told Price during the conversation and why she had done so. Price’s hearsay testimony was duplicative of the victim’s testimony in this regard. Thus, any error in admitting Price’s cumulative hearsay testimony was harmless. See *People v Rodriquez (On Remand)*, 216 Mich App 329, 332; 549 NW2d 359 (1996).

The victim testified that defendant engaged in penile-vaginal intercourse and fellatio with her in his church office in June 2009, after they had returned from the trip to Mobile, Alabama. The victim also testified that defendant engaged in fellatio with her in his church office at least once more during the summer of 2009, when she was not yet 13 years old. This evidence was sufficient to prove beyond a reasonable doubt that defendant engaged in sexual penetration with the victim on three separate occasions when she was less than 13 years of age.

Defendant was also convicted of three counts of CSC-1 under MCL 750.520b(1)(b)(iii), which prohibits a person from engaging in sexual penetration with another person if “[t]hat other person is at least 13 but less than 16 years of age” and “[t]he actor is in a position of authority over the victim and use[s] this authority to coerce the victim to submit.” As this Court explained in *People v Reid*, 233 Mich App 457, 467; 592 NW2d 767 (1999), the elements of CSC-1 under MCL 750.520b(1)(b)(iii) are:

(1) the defendant sexually penetrated another person (the complainant), at a time when (2) the complainant was at least thirteen, but less than sixteen, years old, (3) the defendant was in a position of authority over the complainant, and (4) the defendant used this authority to coerce the complainant to submit to the sexual penetration.

As noted previously, “[s]exual penetration” includes penile-vaginal intercourse and fellatio. MCL 750.520a(r). “[A]ny . . . intrusion, however slight, . . . into the genital . . . openings” is sufficient to prove penile-vaginal intercourse. *Id.*

Shortly after the victim’s thirteenth birthday, she went to defendant’s house to help him clean. The victim testified that, when she was in defendant’s bedroom after cleaning the kitchen, defendant told her to “[s]uck his penis” and she complied. The victim testified that defendant then put his penis “[i]n [her] vagina.” The victim testified that, in the ensuing months, defendant frequently engaged in penile-vaginal intercourse and fellatio with her in his church office. She further testified that defendant engaged in penile-vaginal intercourse with her during a church trip to Ohio, and engaged in both penile-vaginal intercourse and fellatio with her in his church office on the morning of Sunday, August 1, 2010. The testimony established that the victim was 13 years at this time. This constituted sufficient evidence to prove beyond a reasonable doubt that defendant engaged in sexual penetration with the victim on three separate occasions when she was between 13 and 16 years of age.

Furthermore, there was sufficient evidence to prove that defendant occupied a position of authority over the victim and used this position of authority to coerce her to submit to the aforementioned acts of sexual penetration.

Defendant was the victim’s pastor and mentor. The victim’s mother had arranged for defendant to mentor the victim after school. As time went on, the victim’s relationship with defendant became closer and more complicated. Defendant began requesting that Williams send the victim to his home to assist him with cleaning and household chores. The victim was expected to comply with defendant’s directions. The victim was also made a “youth nurse” at the church just before she turned 12 years old. As a “youth nurse,” the victim was responsible for attending to defendant, giving him tea and water, and giving him “towels to wipe his face.”

The victim testified that defendant called her “his daughter” and paid for at least part of her cellular phone bill. The victim believed that defendant was “a man of God because he read the Word. . . [and] used to preach the right stuff.” She also believed that, even though defendant was married, it was permissible to have sex with him because he was her pastor and “God saw it and . . . maybe it was right.” Having sex with the pastor made the victim feel “special,” as if she had “a perfect spot in his heart.” There was more than sufficient evidence to enable a rational jury to conclude beyond a reasonable doubt that defendant was “in a position of authority over the victim” within the meaning of MCL 750.520b(1)(b)(iii). See *Reid*, 233 Mich App at 467-468.

There was also sufficient evidence to prove beyond a reasonable doubt that defendant “used this authority to coerce the victim to submit” to his acts of sexual penetration within the meaning of MCL 750.520b(1)(b)(iii). For purposes of MCL 750.520b(1)(b)(iii), coercion need not be physical; it may be implied or constructive in nature. *Reid*, 233 Mich App at 469. The victim testified that, although she resisted defendant the first few times he assaulted her,<sup>10</sup> she was always afraid to say “No” to defendant because he was her pastor. The victim specifically testified that she believed defendant would retaliate against her if she resisted his sexual advances. Moreover, by making the victim a “youth nurse” at the church and calling the victim to his home when his wife and children were not present, defendant took calculated steps to ensure that he would be able to spend a significant amount of time alone with the victim. See *id.* at 470. Viewing the evidence in a light most favorable to the prosecution, a rational jury could have concluded beyond a reasonable doubt that defendant used his role as the victim’s mentor and spiritual leader, i.e., his position of authority, to coerce the victim into being alone with him and submitting to his acts of sexual penetration. *Id.* at 470-471.

It is true that defendant vigorously denied the charges of sexual assault at trial and claimed that the victim had falsely accused him after speaking with Price, who allegedly fabricated the accusations. Defendant has renewed these claims on appeal. Defendant also insists that in light of the testimony concerning his office door and the presence of others in the vicinity of his church office, he could not have sexually assaulted the victim as she testified. He asserts that the jury should have believed his testimony as well as that of the other defense witnesses. Despite defendant’s arguments, however, “[t]he jury is ‘free to believe or disbelieve, in whole or in part, any of the evidence presented at trial.’” *Unger*, 278 Mich App at 228, quoting *People v Eisenberg*, 72 Mich App 106, 115; 249 NW2d 313 (1976). The jury heard the testimony of defendant and the other defense witnesses. Yet it evidently chose to believe the victim, as it was entitled to do. “This Court does not weigh the competing evidence; that is the jury’s function.” *Unger*, 278 Mich App at 228. We must “afford deference to the jury’s special opportunity to weigh the evidence and assess the credibility of the witnesses.” *Id.* at 228-229.

Defendant also complains that there was no physical evidence, such as DNA or other biological material, to corroborate the victim’s testimony. However, in a prosecution for

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<sup>10</sup> In a prosecution for criminal sexual conduct, it is not necessary to show that the victim resisted the defendant. MCL 750.520i.

criminal sexual conduct “[t]he testimony of a victim need not be corroborated[.]” MCL 750.520h. Further, defendant fails to adequately explain how the victim could have known about the distinguishing black birthmark on his inner thigh, near his scrotum, if the sexual acts did not actually occur. The photographs admitted at trial established that the distinguishing mark would not have been visible to the victim upon casually walking into defendant’s office as defendant claimed. Indeed, in order to capture a photographic image of the birthmark at all, it was necessary for defendant to hold his genitalia up and out of the way while the police officers photographed his inner thigh. On the whole, this photographic evidence tended to corroborate the victim’s testimony at trial.

We conclude that the prosecution presented sufficient evidence to enable a rational jury to find beyond a reasonable doubt that defendant (1) engaged in sexual penetration with the victim on three occasions when she was 12 years old, and (2) used his position of authority over the victim to coerce her to submit to sexual penetration on three occasions when she was 13 years old.

#### V. GREAT WEIGHT OF THE EVIDENCE

Lastly, defendant contends that the jury’s verdict was against the great weight of the evidence. This argument is not properly presented for appellate review because it is not set forth in defendant’s statement of the questions presented. MCR 7.212(C)(5); *People v Miller*, 238 Mich App 168, 172; 604 NW2d 781 (1999). Moreover, it is unpreserved because defendant did not move for a new trial on this ground in the circuit court. *People v Musser*, 259 Mich App 215, 218; 673 NW2d 800 (2003). We review this unpreserved claim for plain error affecting defendant’s substantial rights. *Id.*

Contrary to defendant’s claims, the jury’s verdict was not against the great weight of the evidence. A jury’s verdict is against the great weight of the evidence “only if the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand.” *Unger*, 278 Mich App at 232, citing *People v Lemmon*, 456 Mich 625, 627; 576 NW2d 129 (1998). “Conflicting testimony and questions of witness credibility are generally insufficient grounds for granting a new trial.” *Unger*, 278 Mich App at 232.

As explained previously, defendant contends that the jury should have believed his testimony over that of the victim. He claims that the victim’s testimony was self-serving and “riddled with inconsistencies.” He also claims that the victim “inconsistently reported the precise details of several encounters” and that her testimony defied logic. We do not agree. The victim’s testimony was largely consistent with respect to the dates, times, and places of the sexual assaults. The victim described the birthmark on defendant’s inner thigh and correctly identified the towels in defendant’s church office as possibly containing defendant’s semen. The issues of witness credibility in this case were properly left to the trier of fact. *Id.* Despite the presence of conflicting testimony, we cannot conclude that the jury’s verdict was against the great weight of the evidence. *Id.*

Affirmed.

/s/ Kathleen Jansen  
/s/ Donald S. Owens