

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

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
May 13, 2014

v

EARL ALLEN NORTHROP, JR.,  
  
Defendant-Appellant.

No. 315972  
Sanilac Circuit Court  
LC No. 12-006961-FC

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Before: GLEICHER, P.J., and BORRELLO and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction following a jury trial of three counts of criminal sexual conduct, first degree (CSC I), MCL 750.520b(1)(a), (b)(ii); (victim between 13 and 15; victim a relative), kidnapping, MCL 750.349(1)(c), three counts of criminal sexual conduct, second degree (CSC II), MCL 750.520c(1)(a), (b)(ii) (victim between 13 and 15; victim a relative), and child abuse, second degree, MCL 750.136b(3). All of defendant's convictions stem from an attack on his 15-year-old daughter. Defendant was sentenced as a habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of 40 to 60 years for each of the CSC I convictions, 30 to 50 years for the kidnapping conviction, 19 to 35 years for each of the CSC II convictions, and 19 to 35 years for the second-degree child abuse conviction. For the reasons set forth in this opinion, we affirm the convictions and sentences of defendant.

**I. TESTIMONY**

This appeal arises from an incident on February 13, 2012. According to the testimony of the complainant, on that date, she was home from school with the defendant. The complainant testified that she was fully dressed and watching television when defendant approached her and tried to put duct tape on her wrists and feet. Further, she testified that she fought with defendant and he attempted to duct tape the complainant to the bed and she grabbed the tape and would not let go until he let her get up from the bed. The complainant then went into the kitchen to get some water and she testified that defendant approached her with the duct tape and told her to stop resisting because he did not want to have to throw her on the ground. The complainant and defendant continued to fight until defendant picked up the complainant and took her to an upstairs bedroom.

After fighting with the defendant and trying to fend him off, the complainant next complied with defendant's directions to lie on the bed. Defendant then wrapped her legs

together in duct tape from her ankles to her knees, and taped her wrists together. Defendant then tied the complainant's socks together and put them in her mouth, after which he told the complainant that he was going to kill her and the rest of her family members.

According to the complainant, defendant went downstairs and the complainant heard a spray, and when defendant returned he attempted to put a rag to her nose. The complainant spit out the sock and told defendant to stop while rolling in circles. At trial, the complainant identified what looked like the rag in a picture of the closet in the family room upstairs.

As the complainant was in the bed, she testified that she begged defendant to remove the duct tape. After defendant took the tape off, he followed the complainant to the downstairs bathroom. The complainant testified that she did not attempt to flee because defendant would have chased her. Defendant then began asking the complainant to have sex with him, stating that he waited his whole life to do so. Defendant pushed the complainant onto the bed and removed their clothes. Defendant removed her underwear, licked his fingers and rubbed her vagina, and then licked her vagina. Defendant attempted a couple times without success to put his penis in her vagina. Defendant was unable to get his penis inside her, and she told him to stop and left to go to the bathroom and get a drink.

Subsequently, defendant followed the complainant onto the couch and told her he was "not done yet." Defendant then pulled her off the couch and onto the bed. Defendant then put on a condom and put his penis in her vagina for about 10 minutes. Thereafter, the complainant testified that she went into the bathroom and asked whether she could again get dressed. Defendant responded that she could because he was "not in the mood." The complainant testified that she put on the same clothes she previously wore, and further stated there was no blood in her underwear, but she urinated blood while in the bathroom.

Defendant remained in close proximity to the complainant after the sexual assault, asking whether he should leave, kill himself, or if she hated him. The complainant then testified that defendant put the sheets by the washing machine in the basement and then her mother came home.

The complainant's mother testified that when she arrived home, she saw defendant walk out of the bathroom and appeared disheveled, leading her to conclude he was intoxicated. The complainant and her mother then went to pick up one of the complainant's siblings and the complainant began crying in the car. When the complainant's mother demanded that the complainant tell her what was wrong, the complainant quietly twice said that "he" (defendant) raped her.

The complainant's mother then took the complainant and other family members to the police station, the hospital, and the Child Advocacy Center, where the complainant was examined and her underwear collected.

An examination noted no injury in the vaginal area and her hymen remained intact. The examination did not reveal injuries to the complainant's wrists or legs. The nurse who conducted the examination testified that of the eight 15-year-olds that she had examined in 2012, only two had injuries. The nurse also collected swabs from the complainant's vaginal vault, groin area,

anal area, pubic area, mouth, smears from the vaginal and oral areas, and hair from her head and pubic area, as well as the complainant's jeans, sweatshirt, and bra. These items were then received by Michigan State Police Trooper Jeffery Rodgers.

On the evening of February 14, 2012, Rodgers testified that he returned to the residence to arrest defendant but no one answered the door. Rodgers located defendant's phone a quarter mile away in a field using GPS coordinates and by "pinging" the phone. Utilizing a dog, defendant was located in the residence and arrested.

Around 1:30 a.m. on February 14, 2012, Trooper Lizabeth Hunt assisted in executing a search warrant at defendant's residence. Hunt photographed a green rag in a common-area closet upstairs and a ball of duct tape under the complainant's bed and duct tape in her dresser. Hunt testified there were no sheets on the bed and no condom was found. Trooper Rodgers assisted in searching defendant's residence and he recovered a bottle of absinthe liquor.

Michigan State Police Trooper Daniel Thompson took DNA swabs of defendant's mouth and penis on February 14, 2012. Michigan State Police forensic examiner Cassandra Campbell tested a sample swab from the inner thigh pubic area of the complainant and compared it with a sample from defendant. Due to a lack of DNA, Campbell was only able to test 3 of 11 locations on the "Y" chromosome, and determined that two locations matched defendant's sample and the third was not able to be determined. She explained that one of every two Caucasian males could have the same "Y" DNA markers. Accordingly, she testified, no conclusive determination could be made regarding whether defendant's DNA matched that of the sample taken off the complainant's body.

Michigan State Police forensic scientist Heather Clark tested samples from defendant and the complainant. A sample from the complainant's inner thigh pubic area indicated the DNA of two individuals consistent with a mixture of the complainant and an unidentified male donor. She further testified that defendant was not the major donor and the amount of material from the minor male donor was insufficient for comparison purposes. She also testified that only defendant's DNA was found on defendant's penile swab and that defendant's underwear contained his DNA mixed with two minor donors who were not able to be identified due to the small size of the sample.

Michigan State Police trace evidence examiner Troy Ernst examined the duct tape strips, bundles of fibers removed from the duct tape adhesive, and the complainant's sweatshirt. Ernst applied the duct tape to the left sleeve of the sweatshirt to investigate the fiber bundles that were removed to compare by microscopy, color, and fiber type to the evidence he received. Ernst did not notice any difference between the sample and evidentiary fibers. Ernst concluded that the sweatshirt was a possible source of the fibers tested as well as other similar sweatshirts. Additionally, Michigan State Police fingerprint analyst Kathleen Boyer identified defendant's thumbprint on duct tape evidence.

At trial, one of the complainant's siblings identified a photo of his bedroom and stated that the items in the photo—a sock, underwear, a hand towel, a trash bag, a water bottle, and a tube shaped item—were not in the room when he was last there. The complainant's mother testified that when she returned to the residence she saw a washcloth upstairs that belonged in the

kitchen or the wash. She denied that the complainant kept duct tape in her drawer, and identified a green multi-colored blanket found in the dryer as one often used by the complainant.

Galen Krawczak testified that he was defendant's friend and neighbor for five years. On the evening of February 13, 2012, Krawczak was out of town when defendant called him asking for a ride. Krawczak testified that defendant told him that something bad was going to happen and he needed a ride to Kentucky. According to Krawczak, defendant sounded drunk, and Krawczak told him to lie down and cool off.<sup>1</sup>

Defendant testified that on February 13, 2012, the complainant's mother went to work and her siblings went to school. He denied insisting the complainant stay home from school because she previously wore make-up to school. Defendant testified he had a headache from the night-time cold medicine he took the night before and that he went to sleep and drank a beer and took Nyquil before the complainant's mother came home. Defendant stated that he also drank peppermint schnapps and shots of absinthe alcohol on February 12, 2012, and finished the bottle of absinthe on February 14, 2012.

Defendant stated that he did not interact with the complainant during the day, and could not have carried her up the stairs because he has back problems. Defendant denied using duct tape or sexually assaulting the complainant. Defendant stated that he had never used a condom.

Defendant also denied telling a police officer that he punished his children by using duct tape. On rebuttal, a one minute and fifteen second portion of Hunt's recorded February 14 interview with defendant was played, during which defendant describes previously duct taping the children.

Defendant stated that he had to visit the complainant's teachers and principal on almost a weekly basis because she made up stories about a teacher touching her breasts and butt, loving her, and wanting to impregnate her. The complainant denied these allegations, explaining that, while in seventh grade, she wrote a statement to the school office for her friends stating that a teacher looked down her friends' shirts. The complainant's mother also denied that the complainant's school ever called her about allegations she made about teachers.

The jury found defendant guilty of the charges listed above, and this appeal ensued.

## II. INSUFFICIENT EVIDENCE.

On appeal, defendant makes two arguments. He asserts that the evidence was insufficient to support his convictions and that the jury's verdict was against the great weight of the evidence. As to his claim of insufficient evidence, we note that defendant was not required to take any action below to preserve for appeal the issue of whether his convictions were supported by sufficient evidence. *People v Hawkins*, 245 Mich App 439, 457; 628 NW2d 105 (2001).

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<sup>1</sup> Defendant denied all of the allegations made by the victim. Additionally, defendant testified that he did not recall telephoning Krawczak. He further contended that Krawczak "had something going on" with the victim's mother.

We review de novo defendant's challenge to the sufficiency of the evidence. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). In determining whether the prosecutor has presented evidence sufficient to sustain a conviction, the reviewing court is required to take the evidence in the light most favorable to the prosecutor to ascertain whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt. *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010). Direct and circumstantial evidence, as well as all reasonable inferences that may be drawn therefrom, when viewed in a light most favorable to the prosecution, are considered to determine whether the evidence was sufficient to support defendant's conviction. *People v Hardiman*, 466 Mich 417, 429; 646 NW2d 158 (2002).

Defendant argues, in part, that the evidence was insufficient to convict him of any of the crimes charged because they were based primarily on the complainant's testimony and she was not a credible witness. Generally, we will not interfere with the trier of fact's role of determining the credibility of witnesses. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008). However, where the "testimony contradicts indisputable physical facts or laws, where testimony is patently incredible or defies physical realities, [or] where a witness's testimony is material and is so inherently implausible that it could not be believed by a reasonable juror," we can revisit the issue of credibility. *People v Lemmon*, 456 Mich 625, 643–644; 576 NW2d 129 (1998) (internal quotation marks and citations omitted). Based on our review of the record evidence in this matter, we find none of these circumstances exist.

As previously stated, defendant was convicted of three counts of CSC I. In order to convict defendant of CSC I, under MCL 750.520b(1)(a) and (b)(ii), the prosecutor must have demonstrated that defendant engaged in sexual penetration with the complainant when she was at least 13 but less than 16 years of age and that defendant was related to the complainant by blood "or affinity to the fourth degree." It was not disputed that the complainant was defendant's daughter and was 15 years old when the assault occurred.

It was alleged that defendant sexually penetrated the complainant with his penis, fingers, and tongue. Defendant is correct in his assertion that penetration is more than "mere contact." See, *People v Payne*, 90 Mich App 713, 722; 282 NW2d 456 (1979). The CSC statute defines sexual penetration as "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required." MCL 750.520a(r).

The complainant described a prolonged attack by defendant. The complainant testified to defendant licking his fingers and rubbing them on her vagina, to licking her vagina, and to attempting to penetrate her vagina with his penis. She testified that defendant later penetrated her vagina with his penis after putting on a condom. Defendant concedes that the complainant's testimony was sufficient to establish one count of CSC I, as she explicitly described penile/vagina penetration. However, defendant argues, the complainant described no other instances of penetration. However, the complainant clearly testified that defendant licked her vagina. Again, cunnilingus is one of the listed intrusions that constitute sexual penetration.

Defendant also argues that the complainant's statement that defendant was rubbing her vagina was insufficient to establish vaginal penetration. The complainant's testimony and statement to a sexual assault examiner described digital/genital interaction. The statute requires

at least a slight intrusion, of the finger into the genital opening. MCL 750.520a(r). However, it is not necessary to penetrate the vagina. The external genital organs of a woman include “the mons pubes, labia majora, and other structures between the labia.” *People v Harris*, 158 Mich App 463, 469; 404 NW2d 779 (1987) (emphasis omitted). The female genital openings include the labia majora, which is beyond the body surface. See *People v Bristol*, 115 Mich App 236, 238; 320 NW2d 229 (1982). The evidence presented at trial was sufficient for the jury to conclude that defendant’s fingers penetrated her genital opening.

Defendant was also convicted of three counts of CSC II. In order to convict defendant of a count of CSC II under MCL 750.520c(1)(a) and (b)(ii), the prosecutor must have proven beyond a reasonable doubt that defendant engaged in sexual contact with the complainant when she was at least 13 but less than 16 years of age and that defendant was related to the complainant by blood “or affinity to the fourth degree.” Again, the complainant’s age and relationship to defendant were not at issue.

MCL 750.520a(q) provides the definition for sexual contact:

Sexual contact includes the intentional touching of the victim’s or actor’s intimate parts or the intentional touching of the clothing covering the immediate area of the victim’s or actor’s intimate parts, if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, done for a sexual purpose . . . .

Defendant’s convictions were based on his sexual contact with the complainant’s genitalia with his penis, fingers, and tongue. The nature of the acts, as well as defendant asking the complainant to have sex with him because he had waited his whole life to do so, demonstrates that this contact was sexual in nature. Thus, the complainant’s testimony provided the jury with evidence sufficient to convict defendant of three counts of CSC II.

Defendant was convicted of one count of kidnapping. Kidnapping occurs when a defendant “knowingly restrains another person with the intent to . . . engage in criminal sexual penetration or criminal sexual contact with that person.” MCL 750.349(1)(c). MCL 750.349(2) defines restrain as “to restrict a person’s movements or to confine the person so as to interfere with that person’s liberty without that person’s consent or without legal authority.” “The restraint does not have to exist for any particular length of time and may be related or incidental to the commission of other criminal acts.” *Id.*

The record evidence, reviewed in the light most favorable to the prosecution reveals that the complainant successfully frustrated defendant’s attempt to duct tape her to a downstairs bed. She said defendant then carried her upstairs and placed her onto her brother’s bed. Defendant retrieved the duct tape and wrapped her legs together in tape from her ankles to her knees; he taped her wrists together. Defendant then carried the complainant to the upstairs living room, laid her on a blanket, and tied socks together and put them around her head so they would be in her mouth. Defendant went downstairs and retrieved a rag he attempted to put to her nose. The complaint’s testimony was supported by physical evidence, as police found a ball of duct tape under her bed, a roll of duct tape in her dresser, and a rag on the floor. The roll of duct tape contained defendant’s thumb print. Fibers collected from the ball of duct tape were found to be

no different from fibers found on the sweatshirt the complainant was wearing at the time of the assaults.

Regarding defendant's intentions to sexually assault the complainant, defendant told her that he thought he was raising his girlfriend. He also asked her to engage in sex with him and sexually assaulted her. Hence, review of the record evidence leads us to conclude that the jury had sufficient evidence on which to convict defendant of kidnapping.

Defendant was convicted of one count of second-degree child abuse. MCL 750.136b(3)(c) provides that a defendant is guilty of second degree child abuse where "the person knowingly or intentionally commits an act that is cruel to a child regardless of whether harm results." MCL 750.136b(1)(c) defines cruel as "brutal, inhuman, sadistic, or that which torments." Here, defendant duct taped the complainant's limbs together, gagged her mouth, and put a rag to her nose. While bound, defendant told the complainant that he was going to kill her, her mother and siblings, and questioned whether the complainant was his daughter. The jury heard evidence sufficient to convict defendant of second-degree child abuse.

Defendant argues that no positive physical evidence linked him to the crimes. This assertion is not correct. As previously discussed, physical evidence did support the complainant's accusations that resulted in convictions for kidnapping and second-degree child abuse. Rather, defendant seemingly argues that there was a lack of DNA evidence linking him to the sexual assault. We find defendant's argument that the lack of DNA evidence relative to his convictions under MCL 750.520b(1)(a), (b)(ii) and MCL 750.520c(1)(a), (b)(ii), is tantamount to insufficient evidence unpersuasive. As previously stated, the complainant's testimony, if believed, was sufficient evidence to convict defendant on the all the charges. Additionally, MCL 750.520h explicitly states: "The testimony of a victim need not be corroborated in prosecutions under sections 520b to 520g." See also, *People v Phelps*, 288 Mich App 123, 133; 791 NW2d 732. There was sufficient evidence to support defendant's convictions.

### III. GREAT WEIGHT OF THE EVIDENCE.

Defendant also argues that the jury's verdict was against the great weight of the evidence. The test to determine whether a verdict is against the great weight of the evidence is whether the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand. *People v McCray*, 245 Mich App 631, 637; 630 NW2d 633 (2001). We cannot make such a finding relative to the evidence presented in this case.

A claim that a defendant's conviction was against the great-weight of the evidence must be raised in a motion for a new trial in the trial court. *People v Cameron*, 291 Mich App 599, 616-617; 806 NW2d 371 (2011). Here, defendant did not move for a new trial. However, his unpreserved great weight argument is reviewed for plain error affecting substantial rights. *People v Shafier*, 277 Mich App 137, 143; 743 NW2d 742 (2007), rev'd on other grounds 483 Mich 205 (2009). Reversal is warranted only if the plain error resulted in the conviction of an

innocent defendant or if the error seriously affected the fairness, integrity, or public reputation of judicial proceedings independent of defendant's innocence.<sup>2</sup> *Id.*

Defendant's arguments relative to this issue are the same as presented in his assertion that there was insufficient evidence. The major thrust of this argument is seemingly that the lack of DNA evidence preponderates so heavily against the verdict that a miscarriage of justice has resulted. Again, we cite to the record evidence of the complainant, her mother, Krawczk, and Michigan State Police forensic experts in making a finding that sufficient, credible evidence was presented from which the jury could find defendant guilty of all the charges. We again cite to MCL 750.520h and *Phelps*, 288 Mich App at 133 for the proposition that the complainant's testimony need not be corroborated. To the extent there was a lack of DNA evidence, we note that testimony revealed that the use of a condom, coupled with defendant washing the blanket and sheets prior to police seizure of these items all could explain the lack of DNA evidence. Moreover, plaintiff is not required to negate or disprove every reasonable theory consistent with defendant's innocence. See, *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Accordingly, we cannot find that defendant's convictions were against the great weight of the evidence.

Affirmed.

/s/ Elizabeth L. Gleicher  
/s/ Stephen L. Borrello  
/s/ Deborah A. Servitto

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<sup>2</sup> We would still deny defendant relief on this issue even if it had been properly preserved.