# STATE OF MICHIGAN

# COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS LEE ACKLEY,

Defendant-Appellant.

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UNPUBLISHED
March 7, 1997

No. 185904
Calhoun Circuit Court
LC No. 94-2700-FC

Before: Reilly, P.J., and MacKenzie and B.K. Zahra*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), involving his nine-year-old daughter. He was sentenced to seven to twenty years' imprisonment for each conviction. At sentencing, defendant was held in contempt of court, MCL 600.1701; MSA 27A.1701, and was given an additional thirty-day sentence, after he threw a box of tissues at the judge. Defendant appeals his convictions and sentence as of right. We affirm.

Defendant first contends that the court erred in admitting the testimony of Laura Nardi, a psychologist to whom defendant was referred by Child Protective Services, regarding information defendant disclosed to her during their counseling sessions. The decision whether to admit evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made. *People v McAlister*, 203 Mich App 495, 505; 513 NW2d 431 (1994). We find no abuse of discretion in this case.

Under the social worker-client privilege, MCL 339.1610; MSA 18.425(1610), a communication between a social worker and her client is generally privileged and confidential; however,

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* Circuit judge, sitting on the Court of Appeals by assignment.

the privilege may be waived by the client. *People v Stanaway*, 446 Mich 643, 659; 521 NW2d 557 (1994). In this case, defendant signed a waiver, provided to him by Nardi, stating in part:

> It is important for you to understand that:
>
> ***
>
> (3) Your therapist may be called to testify in court. Under oath, he or she can be ordered by a Judge to answer any questions an attorney asks.
>
> (4) Your therapist is required by law to report any case of child abuse you tell him or her about.

Pursuant to the terms of the statement, defendant waived the privilege with respect to any communication for which the court ultimately could request Nardi's testimony. See *In re Zelzack*, 180 Mich App 117, 127; 446 NW2d 588 (1989) and compare *In the Matter of Atkins*, 112 Mich App 528, 542; 316 NW2d 477 (1982).

Defendant maintains that he did not knowingly waive the privilege because he did not have the mental ability to understand from the document that Nardi could be called to testify against him in criminal proceedings. We find no error in the trial court's conclusion that the signed statement was so explicit that, even from defendant's subjective point of view, he could reasonably expect that any admissions of child sexual abuse made by him could later be the subject of Nardi's courtroom testimony. Furthermore, although defendant has some learning disabilities that may have impeded his ability to read and digest the content of the waiver on his own, he admittedly received assistance reading the document from both his mother and Nardi, and was given the opportunity to ask questions. Defendant was in no way coerced to sign the statement or to attend the counseling sessions, even though he cooperated in the hope of keeping his family together. Under these circumstances, the trial court did not err in ruling that defendant's waiver was knowing, voluntary, and intelligent. Moreover, in light of defendant's waiver, the court did not abuse its discretion by admitting Nardi's testimony.

Defendant further asserts that by allowing Nardi's testimony, the court violated defendant's constitutional right against self-incrimination. However, defendant's brief does not cite any case law in support of this claim, nor does it develop the argument beyond a bald assertion of the violation. A party may not leave it to an appellate court to search for authority to sustain or reject his position, *American Transmission, Inc v Attorney General*, 216 Mich App 119, 121; 548 NW2d 665 (1996), or to develop arguments that are not adequately argued on appeal, *Severn v Sperry Corp*, 212 Mich App 406, 415; 538 NW2d 50 (1995).

Defendant next claims that there was insufficient evidence of sexual penetration to sustain his convictions. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Jacques*, 215 Mich App 699, 702-703; 547 NW2d 349 (1996). Here, the jury heard direct testimony from the victim that

defendant put his finger in her "butt hole." In addition, she testified that he put his penis "half-way" into her vagina in such a manner as to cause her pain. Testimony of the victim that defendant engaged in sexual penetration is sufficient evidence from which the jurors could infer that sexual penetration took place. *People v Reinhardt*, 167 Mich App 584, 598; 423 NW2d 275 (1988), vacated on other grounds 436 Mich 866; 460 NW2d 226 (1990). With respect to the vaginal penetration, evidence of penetration of the labia majora is sufficient to sustain a finding of penetration within the meaning of the statute. *People v Legg*, 197 Mich App 131, 133; 494 NW2d 797 (1992). Furthermore, one witness, social worker Lee Koteles, testified that defendant admitted to sexually penetrating the victim. Viewing the evidence in a light most favorable to the prosecutor, there was sufficient evidence from which reasonable jurors could find beyond a reasonable doubt that sexual penetration had occurred in both instances.

Finally, defendant argues that his seven-year minimum sentence was disproportionate. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990). Again, we disagree. The sentence was within the guidelines' range of two to eight years and therefore is presumptively proportionate. *People v Hardy*, 212 Mich App 318, 321; 537 NW2d 267 (1995). Defendant failed to present any evidence of unusual circumstances that would overcome the presumption of proportionality. His sentence was therefore not an abuse of discretion.

Affirmed.

/s/ Maureen Pulte Reilly
/s/ Barbara B. MacKenzie
/s/ Brian K. Zahra