

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GLADSTONE CHARLES BLANTON,

Defendant-Appellant.

UNPUBLISHED

February 16, 1999

Nos. 204845; 208324

Macomb Circuit Court

LC Nos. 96-002329 FC;

96-002328 FC

Before: Hoekstra, P.J., and Doctoroff and O'Connell, JJ.

PER CURIAM.

Defendant was originally charged with one count of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), against one of his step-grandchildren, and two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), against another step-grandchild. The two cases were consolidated for jury trial. Defendant was convicted of one count of first-degree criminal sexual conduct against one of the children and one count of the lesser offense of second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), against the other. He was sentenced to eight to fifteen years' imprisonment for each conviction, the sentences to be served concurrently. He appeals from the first-degree criminal sexual conduct conviction as of right, and from the second-degree criminal sexual conduct conviction by leave granted. We affirm.

Defendant first argues that the trial court abused its discretion when it allowed one of the victims to testify on redirect examination that there were criminal sexual conduct charges currently pending against her father in which she was the victim. The decision whether evidence is admissible is within the trial court's discretion and should only be reversed where there is a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). 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 Warren*, 228 Mich App 336, 341; 578 NW2d 692 (1998).

Defendant contends that the testimony was irrelevant, or, even if it was relevant, that it was more prejudicial than probative. We disagree. MRE 402 provides that evidence that is relevant will generally be admissible. When defendant asked the victim whether she had made accusations against

her father and later retracted them, he was attempting to impeach her credibility by implying that she had a history of making false accusations and then recanting. Therefore, whether there were pending charges against the victim's father was relevant to the determination of whether she was a credible witness. Furthermore, the subject matter of the testimony was not defendant, but defendant's stepson. Therefore, the evidence was not more prejudicial than probative. Finally, defendant's unpreserved argument that the trial court's ruling violated MRE 608(b) is not subject to review by this Court because defendant has failed to show that the admission of the evidence resulted in manifest injustice. *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996).

Defendant next argues that he was denied a fair trial due to the prosecutor's improper remarks during closing argument. Claims of prosecutorial misconduct are decided on a case by case basis. *People v Howard*, 226 Mich App 528, 544; 575 NW2d 16 (1997). This Court must examine the record and evaluate the prosecutor's remarks in context. *People v Green*, 228 Mich App 684, 692-693; 580 NW2d 444 (1998). The test is whether defendant was denied a fair and impartial trial. *Id.* at 693.

It is, as defendant argues, improper for the prosecutor to appeal to the jury to sympathize with the victim, *People v Dalessandro*, 165 Mich App 569, 581; 419 NW2d 609 (1988), or to urge jurors to convict the defendant as part of their civic duty, *People v Bahoda*, 448 Mich 261, 282-283; 531 NW2d 659 (1995). However, we do not believe that the prosecutor's remarks were designed to improperly elicit sympathy for the victims. The prosecutor simply made general comments regarding the things that children "deserve," including safety, and noted that it is difficult to protect children from intra-family crimes. We fail to see how these comments amounted to a "civic duty" argument. Moreover, the trial court cured any unfair prejudice stemming from the challenged comments by instructing the jury that the prosecutor's comments were not evidence. See *Green, supra* at 693. Therefore, we find that defendant was not denied a fair trial.

Affirmed.

/s/ Joel P. Hoekstra
/s/ Martin M. Doctoroff
/s/ Peter D. O'Connell