

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LISA RENEE KOK,

Defendant-Appellant.

UNPUBLISHED

April 18, 2000

No. 209344

Kent Circuit Court

LC No. 97 004732 FH

Before: Gage, P.J., and Meter and Owens, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of third-degree child abuse involving her seven year-old stepdaughter, MCL 750.136b(4); MSA 28.331(2)(4). The trial court sentenced defendant to a term of sixteen to twenty-four months' imprisonment. Defendant appeals as of right, and we affirm.

Defendant first contends that the trial court's refusal to permit defendant to cross examine the seven year-old victim concerning allegedly inconsistent statements the victim made during the preliminary examination violated defendant's constitutional right to confrontation. While defendant acknowledges that the trial court permitted her, after all the trial testimony had been heard, to read to the jury any allegedly inconsistent statements of the victim, defendant suggests that this method of impeachment had a drastically different effect on the jury than if the victim had been confronted with her inconsistent statements during or immediately after testifying at trial.

Defendant has not properly preserved this issue for appellate review because she failed to object at trial to the court's limitation of her cross examination of the victim. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994) (As a general rule, issues not raised before a trial court cannot be raised on appeal absent compelling or extraordinary circumstances.). This Court reviews unpreserved allegations of constitutional error for plain error that affected a defendant's substantial rights. In the event that such plain error has occurred, the reviewing court should reverse only when the defendant is actually innocent or the error seriously affected the fairness, integrity or public reputation of the judicial proceedings. *People v Carines*, 460 Mich 750, 763-764, 774; 597 NW2d 130 (1999).

The right to cross examination represents a primary interest secured under a defendant's right to confrontation. While a defendant is guaranteed a reasonable opportunity to test the truth of a witness' testimony, the right to cross examination is not without limit. Trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant. *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993).

In this case, the method of impeachment of the victim permitted by the trial court provided a reasonable alternative that avoided confusion of the issues, provided an effective method for the ascertainment of the truth, and prevented any harassment of the victim, a child witness. MRE 611(a). The trial court interrupted defense counsel's cross examination of the victim, and at a sidebar informed the parties that it would not allow defense counsel to impeach the victim through questioning concerning the victim's statements at the preliminary examination. The trial court twice explained that it prohibited defense counsel from impeaching the victim through direct questioning because the court believed that this method, cross examination on the basis of allegedly inconsistent prior statements, was not a meaningful way to impeach a seven year-old child. The trial court remarked that allowing defense counsel to read the victim's inconsistent statements to the jury after the victim testified still brought to the jury's attention the alleged inconsistencies. We note that this limitation represented the only limitation the trial court imposed during defense counsel's otherwise lengthy cross examination of the victim. In light of the trial court's broad discretion in limiting cross examination and the reasonableness of the limitation imposed in the instant case, we conclude that the trial court did not abuse its discretion in limiting defendant's cross examination of the victim. MRE 611(a); *Adamski, supra*.

Even assuming the existence of a plain error in the trial court's limitation of defendant's cross examination of the victim, defendant has not established her entitlement to a new trial. Although the victim was the prosecutor's most important witness and the victim's credibility was a key issue in the jury's analysis, any error committed by the trial court in limiting cross examination did not affect the fairness, integrity or public reputation of the judicial proceedings because defense counsel otherwise was permitted extensive cross examination of the victim. *Carines, supra*; *People v Kelly*, 231 Mich App 627, 644; 588 NW2d 480 (1998) (Whether a violation of the right to adequate cross examination constitutes harmless error depends on a host of factors, including the importance of the witness' testimony, whether the testimony was cumulative, the presence or absence of evidence corroborating or contradicting the testimony of the witness, the extent of cross examination otherwise permitted, and the overall strength of the prosecutor's case.).

Through effective cross examination, defense counsel had already elicited contradictory statements by the victim regarding the purpose of the basement fencing (in which defendant placed the victim on the day of the charged offense) when defense counsel then sought to further reinforce the contradictory testimony by impeaching the victim with her prior inconsistent statement during the preliminary examination. While defense counsel also introduced the victim's prior preliminary examination statement that both her father, also a defendant at trial, and her stepmother placed her in the basement, thus contradicting her trial testimony that her stepmother alone took her to the basement, we

note that the two statements are consistent with respect to defendant's involvement in placing the victim in the basement. Considering (1) the cumulative and insignificant nature of the impeachment based on prior inconsistent statements, (2) the strength of the prosecutor's case against defendant, which included the victim's testimony concerning defendant's attack and testimony of a police officer and physician further substantiating the victim's testimony, and (3) defense counsel's lengthy cross examination of the victim, we detect absolutely no indication that defendant is actually innocent or that the fairness, integrity or public reputation of the judicial proceedings was affected. *Carines, supra*.

Defendant also argues that the trial court erred in departing from the sentencing guidelines without articulating in the sentencing information report its reasons for doing so. On December 29, 1997, defendant was committed to the department of corrections to serve a minimum term of sixteen months. Because it appears that defendant must have completed serving the sentence imposed, this issue is moot and we decline to review it. *People v Rutherford*, 208 Mich App 198, 204; 526 NW2d 620 (1994).

Affirmed.

/s/ Hilda R. Gage
/s/ Patrick M. Meter
/s/ Donald S. Owens