

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FREDDIE BAKER,

Defendant-Appellant.

UNPUBLISHED

June 16, 2000

No. 219143

Calhoun Circuit Court

LC No. 98-001525-FC

Before: Hoekstra, P.J., and Holbrook, Jr., and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of first-degree criminal sexual conduct involving his ten-year-old stepdaughter. MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). He was sentenced to serve 15 to 25 years in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the trial court abused its discretion in allowing an examining physician to testify regarding hearsay statements made by the complainant identifying the perpetrator and describing the alleged incidents. This argument is without merit.

Under the medical treatment exception to the hearsay rule, MRE 803(4), a statement identifying an assailant is admissible if it was reasonably necessary to diagnosis and treatment. *People v Meeboer (After Remand)*, 439 Mich 310; 484 NW2d 621 (1992). The underlying rationale for admitting such hearsay statements under MRE 803(4) is the existence of “(1) the self-interested motivation to speak the truth to treating physicians in order to receive proper medical care, and (2) the reasonable necessity of the statement to the diagnosis and treatment of the patient.” *Solomon v Shuell*, 435 Mich 104, 119; 457 NW2d 669 (1990).

Recognizing that a young person may not have the same understanding of the need to tell the truth to medical professionals as adults do, the Michigan Supreme Court has established a totality of the circumstances test, composed of ten factors, which must be evaluated and balanced in determining whether a child’s statement to a medical professional bears the sufficient indicia of trustworthiness to be admitted pursuant to MRE 803(4). *Meeboer, supra* at 324-325. A child is of tender years

necessitating this evaluation when less than ten years old; an older child is subject to a rebuttable presumption that she understands the need to tell the truth. MRE 803A; *People v Van Tassel*, 197 Mich App 653, 662; 496 NW2d 388 (1992).

Here, the complainant was over the age of ten at the time of her medical examination. Thus, she was not of “tender years” as defined by MRE 803A, and the *Meeboer* factors had no application. *Van Tassel, supra* at 662. Nonetheless, to the extent that the *Meeboer* factors are relevant in determining whether defendant rebutted the presumption of trustworthiness that arose from the complainant’s age, we conclude that the trial court’s findings regarding these factors were supported by the record. Accordingly, the trial court did not abuse its discretion in admitting the physician’s testimony regarding the complainant’s statements.

Defendant also argues that he is entitled to resentencing under the 1999 legislative sentencing guidelines, which provide for a lower recommended range than the 1988 judicially-created guidelines under which the trial court sentenced defendant. This precise argument was considered and rejected in the recent case of *People v Reynolds*, ___ Mich ___; ___ NW2d ___ (Docket No. 211458, issued 3/17/2000), slip op at 2. This Court held that the statutory sentencing guidelines, MCL 777.1 *et seq.*; MSA 28.1274(11) *et seq.*, apply only to felony offenses committed on or after January 1, 1999. See MCL 769.34; MSA 28.1097. Here, defendant’s offense was committed in 1997. Therefore, he was not entitled to be sentenced under the new statutory guidelines.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Donald E. Holbrook, Jr.

/s/ Brian K. Zahra