STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Petitioner-Appellee,	UNPUBLISHED August 1, 2000
v	No. 214441 Wayne Circuit Court
NITASHA HOLLIS, Respondent-Appellant.	Family Division LC No. 97-360103

Before: Hood, P.J., and Sawyer and Cavanagh, JJ.

PER CURIAM.

Respondent appeals as of right from a family court order adjudicating her responsible for first-degree criminal sexual conduct, MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), for which she was placed on probation in her own home. We affirm.

Respondent contends that the trial court erred in determining that the four-year-old victim was competent to testify without personally questioning the witness as required under MRE 601 and the then-applicable child witness statute, MCL 600.2163; MSA 27A.2163.[1] Because respondent's counsel failed to object to the prosecutor's questioning of the witness, and participated himself in the voir dire examination of the child to determine his competency, the issue has been waived. *People v Buck*, 197 Mich App 404, 423; 496 NW2d 321 (1992).

Respondent next contends that the trial court erred in adjudging the child competent to testify. We review this issue for an abuse of discretion. *People v Breck*, 230 Mich App 450, 457; 584 NW2d 602 (1998). A child is competent to be a witness if the court finds, after examining the child, that he has sufficient intelligence and a sense of obligation to tell the truth. MRE 601; MCL 600.2163; MSA 27A.2163. The purpose of the court rule and statute is to insure that a young child has sufficient intelligence and a sense of obligation to testify truthfully. *People v Jehnsen*, 183 Mich App 305, 307; 454 NW2d 250 (1990). The victim demonstrated an understanding of the concept of telling the truth when he said it would be wrong to identify something as other than it really was, that it was bad to tell a

[1] The statute was repealed by 1998 PA 323, effective August 1, 1998.

lie, and that it was good to tell the truth. He also promised to tell the truth in court. We therefore find that the trial court did not abuse its discretion in finding the witness competent to testify. *People v Edgar*, 113 Mich App 528, 530, 535; 317 NW2d 675 (1982).

We agree that the trial court erred in allowing the child's mother to testify to the child's statements under MRE 803A, because the child's statements were not spontaneous but were instead made in response to questions concerning sexual abuse. *People v Davison*, 12 Mich App 429, 433; 163 NW2d 10 (1968). However, because this was a bench trial and because the child, who was properly qualified as a witness, testified about the incident himself, any error in admitting the hearsay statements was harmless. *People v Meeboer*, 181 Mich App 365, 373-374; 449 NW2d 124 (1989), aff'd 439 Mich 310 (1992); *People v Payne*, 37 Mich App 442, 444-445; 194 NW2d 906 (1971).

Defendant lastly contends that the prosecution failed to prove the elements of the crime charged beyond a reasonable doubt. In reviewing the sufficiency of the evidence in a criminal case, this Court must review the record de novo and, viewing the evidence in a light most favorable to the prosecution, determine whether a rational trier of fact could find that the essential elements of the crime were proved beyond a reasonable doubt. *People v Hoffman*, 225 Mich App 103, 111; 570 NW2d 146 (1997); *People v Hammons*, 210 Mich App 554, 556; 534 NW2d 183 (1995). Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of the crime. *People v Gould*, 225 Mich App 79, 86; 570 NW2d 140 (1997). All conflicts in the evidence are to be resolved in favor of the prosecution. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997).

The elements of first-degree CSC are that defendant engaged in sexual penetration with another person and that person was under the age of thirteen. MCL 750.520b(1)(a); MSA 28.788(2)(1)(a). Sexual penetration includes fellatio, MCL 750.520a(l); MSA 28.788(1)(l), which has been defined as "The act of taking the penis into the mouth." *People v Harris*, 158 Mich App 463, 469; 404 NW2d 779 (1987), quoting *Dorland's Illustrated Medical Dictionary* (23d ed). The victim testified that he told his mother that defendant put her mouth on his "private," i.e., his penis, and that what he told his mother was the truth. Such testimony, if believed, is sufficient to enable a rational trier of fact to conclude beyond a reasonable doubt that defendant performed fellatio on the boy. Although the child stated that he did not remove his clothes, the fact that he was dressed did not make it physically impossible for defendant to have performed the act in question.

Affirmed.

/s/ Harold Hood
/s/ David H. Sawyer
/s/ Mark J. Cavanagh