

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JANICE MARIE TIPTON,

Defendant-Appellant.

UNPUBLISHED

December 26, 2000

No. 216487

Genesee Circuit Court

LC No. 97-1223-FC

Before: Griffin, P.J., and Holbrook, Jr., and Murphy, JJ.

PER CURIAM.

Defendant appeals as of right from her convictions of first-degree criminal sexual conduct (person under thirteen years old), MCL 750.520b(1)(a); MSA 28.788(2)(1)(a), and pandering, MCL 750.455; MSA 28.710, following a six-day jury trial. Defendant was sentenced as a second habitual offender, MCL 769.10; MSA 28.1082, to fifteen to twenty-five years' imprisonment on each charge. We affirm.

Defendant first contends that the trial court erred in admitting the sworn probate court testimony of defendant's then twelve-year-old daughter as substantive evidence in defendant's criminal trial. The victim testified in probate court at defendant's termination of parental rights hearing that she had sex at defendant's request with an adult male in an abandoned house in exchange for defendant's promise of expensive shoes and money. The victim subsequently recanted this story at defendant's preliminary examination and trial, contending that she had fabricated the story to avoid being punished for skipping school.

Generally, an out-of-court statement offered to prove the truth of the matter asserted is inadmissible hearsay. MRE 801(c); MRE 802. However, MRE 801(d)(1)(A) defines as nonhearsay the prior statement of a witness who testifies at trial and is subject to cross-examination concerning the statement, provided (1) the statement is inconsistent with the trial testimony and (2) the statement was given under oath at a hearing or other proceeding. Prior inconsistent statements that meet these requirements are admissible as substantive evidence. *People v Chavies*, 234 Mich App 274, 281-284; 593 NW2d 655 (1999); see also *People v Malone*, 445 Mich 369, 375-378, 381-383; 518 NW2d 418 (1994).

Undoubtedly, the victim's probate court testimony was an out-of-court statement offered to prove the truth of the matter asserted. Nevertheless, the probate court testimony was given

under oath, the victim testified at defendant's preliminary examination and trial, and she was subject to vigorous cross-examination at both the preliminary examination and trial. Accordingly, the probate court testimony was nonhearsay, and MRE 801(d)(1)(A) permits its admission as substantive evidence.

Because we conclude that the trial court properly admitted this testimony as substantive evidence, we need not address defendant's remaining related issues.

Affirmed.

/s/ Richard Allen Griffin
/s/ Donald E. Holbrook, Jr.
/s/ William B. Murphy