STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 19, 2001
v	No. 226037 Livingston Circuit Court
JABARNOW DARNELL BENTLEY, Defendant-Appellant.	LC No. 99-011356-FH

Before: K. F. Kelly, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of third-degree criminal sexual conduct, MCL 750.520d(1)(a), and one count of assault and battery, MCL 750.81(1). He was sentenced to five to fifteen years' imprisonment for the CSC convictions and to a ninety-day jail term for the assault and battery conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court improperly denied his motion for change of venue. We review the grant or denial of a motion for change of venue for an abuse of discretion. *People v Jendrzejewski*, 455 Mich 495, 500; 566 NW2d 530 (1997).

Generally, criminal defendants should be tried in the county where the offenses charged allegedly occurred. *Id.* at 499; MCL 600.8312. However, a trial court can grant a change of venue for good cause. MCL 762.7. "Good cause" concerns the ability to obtain a fair trial in the county where the action is brought. *In re Attorney General*, 129 Mich App 128, 135; 341 NW2d 253 (1983).

Defendant, an African-American, asserts that good cause was established by the absence of any African-Americans in the jury pool. We disagree. Defendant has not presented any evidence that he was denied a fair trial because there were no African-Americans on the jury or at least in the jury pool. Indeed, a review of the record reveals that trial counsel voir dired the potential jurors about any prejudices regarding race and inquired whether any of them would have difficulty rendering a decision in the case because of defendant's race. None of the potential jurors expressed such difficulty, and defense counsel indicated that he was satisfied with the jury after voir dire. See *People v Clark*, 243 Mich App 424, 426; 622 NW2d 344 (2000) (failure to renew a motion for a change of venue and an expression of satisfaction with the jury can waive a change of venue issue).

Additionally, we acknowledge, and defendant readily admits, that he was not challenging the method used in this county for the selection of the jury pool. This is perhaps because of the onerous requirements for those cases[1]. Thus, we believe that defendant's motion for change of venue was simply an attempt to circumvent those requirements. In any event, defendant has not demonstrated good cause and, therefore, the trial court did not abuse its discretion in denying defendant's motion.

Next, defendant contends that he was denied a fair trial by improper prosecutorial comments during closing argument. Defendant did not object to the allegedly improper comments, and therefore we will review defendant's claim only for plain error. *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000).

Issues of prosecutorial misconduct are decided case-by-case, with the reviewing court examining the pertinent portion of the record and evaluating the prosecutor's remarks in context to determine whether the defendant was denied a fair trial. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). Here, defendant claims that the following statements improperly bolstered the credibility of the victim.

> It was a lot easier to say it didn't happen. It was a lot easier to say it didn't happen. What was hard is to come here and tell you the God's honest truth. But, that's exactly what [the victim] did. He came here and he told you what happened.
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> * * *
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> Fortunately, [the victim] didn't get hurt. He was able to come here. He was able to come to this courtroom. He came clean with you. He told you what was right about his statement. What was wrong about his statement. And he came here and he told you this, ladies and gentlemen because it happened. Because, it was true.

A prosecutor can argue the evidence and all reasonable inferences arising from that evidence. *Schutte, supra* at 721. However, a prosecutor may not vouch for the credibility of a witness, nor suggest that the government has some special knowledge that the witness is testifying truthfully. A prosecutor may, however, argue from the facts that a witness is credible or that the defendant or another witness is not worthy of belief. *People v Howard*, 226 Mich App 528, 548; 575 NW2d 16 (1997). Here, the prosecutor did not personally vouch for the credibility of the victim. The prosecutor's reference to how difficult it was for the victim to describe in open court the acts he was forced to perform and the reference to the fact that the victim explained the discrepancies in statements he made to authorities indicate that the prosecutor simply argued to the jury that the evidence presented at trial demonstrated that the victim was credible. See *Howard, supra* at 548. Further, the prosecutor's remarks were in response to defense counsel's arguments that the victim was untruthful. *People v Watson*, 245

[1] "To establish a prima facie violation of the fair cross-section requirement, a defendant must show that distinctive group was underrepresented in his venire or jury pool, and that the underrepresentation was the result of systematic exclusion of the group from the jury selection process." *People v Smith*, 463 Mich 199, 203; 615 NW2d 1 (2000).

Mich App 572, 592-593; 629 NW2d 411 (2001), citing *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996). Defendant has not demonstrated outcome-determinative plain error.

Lastly, defendant argues that the evidence was insufficient to support the CSC convictions. In reviewing the sufficiency of the evidence, we view the evidence in a light most favorable to the prosecutor and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999).

Defendant was convicted of third-degree CSC pursuant to MCL 520d(1)(a), which prohibits sexual penetration with another person who is at least thirteen years of age and under sixteen years of age. Sexual penetration is defined as "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required." MCL 750.520a(m); *People v Goold*, 241 Mich App 333, 341; 615 NW2d 794 (2000).

Here, the victim testified that he was a fourteen-year-old resident of the Maxey Training School when defendant approached him in his room and said, "I want you to suck my dick." Defendant threatened physical harm to the victim if the victim did not comply. Defendant removed his penis from under his clothing and the victim got down on his knees and performed fellatio on defendant for three or four minutes. Defendant returned to the victim's room two or three weeks later and said, "I want some head again." The victim testified that he got down on his knees and started performing fellatio on defendant. This evidence is sufficient to permit a rational trier of fact to find beyond a reasonable doubt that defendant was guilty of two counts of third-degree criminal sexual conduct.[2]

Affirmed.

/s/ Kirsten Frank Kelly
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald

[2] It is the function of the jury alone to decide the weight and credibility to give to the victim's testimony. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 749, amended 441 Mich 1201 (1992).