

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY YOUNG,

Defendant-Appellant.

UNPUBLISHED

February 8, 2002

No. 226756

Wayne Circuit Court

LC No. 99-007779

Before: Cavanagh, P.J., and Neff and B. B. MacKenzie*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree criminal sexual conduct, MCL 750.520b(1)(a), and second-degree criminal sexual conduct, MCL 750.520c(1)(a). He was sentenced to concurrent terms of eleven to twenty-five years' imprisonment for the first-degree CSC conviction and ten to fifteen years' imprisonment for the second-degree CSC conviction. He appeals as of right. We affirm.

Defendant first argues that he was denied a fair trial and due process because of certain remarks made by the prosecutor during closing arguments. Defendant did not object to the challenged remarks at trial. Thus, reversal is required only when a plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *People v Grant*, 445 Mich 535, 552-554; 520 NW2d 123 (1994).

Having reviewed the record as a whole, and considering the remarks in context, we find no error. The prosecutor properly commented on the evidence or reasonable inferences from the evidence, and did not imply that she had special knowledge that a witness was testifying truthfully or falsely. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995).

Defendant next argues that improper hearsay was admitted into evidence when a treating physician testified about the child victim's recitation of the events underlying the offense. We find no error. The child's version of the events was admissible as a statement made for purposes of medical treatment or medical diagnosis in connection with treatment. MRE 803(4); *People v Meeboer (After Remand)*, 439 Mich 310, 328-330; 484 NW2d 621 (1992).

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

In his third argument, defendant urges that the victims' mother twice gave improper hearsay testimony. In one instance, the mother began to testify about victim PH's version of the events, which formed the basis for the first-degree CSC conviction. Upon objection, the prosecutor rephrased the question to serve a non-hearsay purpose, and a non-hearsay answer was elicited. We find no error. Moreover, no curative instruction was sought to minimize any harm that may have followed from the mother's truncated response. See *People v Harris*, 158 Mich App 463, 466; 404 NW2d 779 (1987).

In another instance, the mother testified regarding victim SH's version of the events which supported the second-degree CSC conviction. No objection was raised. Thus, reversal is required only if a plain error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings. MRE 103; *Carines, supra*; *People v Coy*, 243 Mich App 283, 287; 620 NW2d 888 (2000). The victim's statements were arguably admissible as an excited utterance under MRE 803(2). Therefore, plain error has not been shown.

Finally, defendant argues that trial counsel's failure to object to the matters discussed above deprived him of the effective assistance of counsel. Because defendant did not move for an evidentiary hearing, we limit our review to the record. *People v Avant*, 235 Mich App 499, 507; 597 NW2d 864 (1999). Defendant has not shown that his trial counsel's performance was so deficient that it prejudiced his right to a fair trial. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Janet T. Neff
/s/ Barbara B. MacKenzie