STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 15, 2001
V	No. 215424 Genesee Circuit Court
JEFFREY LEE LAMPIN, Defendant-Appellant.	LC No. 98-002588-FC

Before: Neff, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree criminal sexual conduct, MCL 750.520b(1)(b); MSA 28.788(2)(1)(b), and second-degree criminal sexual conduct, MCL 750.520c(1)(a); MSA 28.788(3)(1)(a). He was sentenced to concurrent terms of imprisonment of fifteen to twenty-five years for the first-degree CSC conviction, and ten to fifteen years for the second-degree CSC conviction. He appeals as of right. We affirm.

I

This case arose when defendant's daughter, SL, who was thirteen at the time of trial, and also defendant's girlfriend's daughter, FS, who was approximately the same age, alleged that defendant had initiated, and engaged in, sexual activity with them. SL was the complaining witness at trial, but FS had changed her story and testified, for the defense, that the allegations were fabricated as part of a scheme to have SL move out of defendant's home and placed back with her mother.

II

On appeal, defendant claims error in connection with several of the trial court's rulings regarding hearsay issues. We agree with defendant that the court improperly allowed hearsay testimony, but conclude that the error was harmless.

A defendant asserting a claim of preserved, nonconstitutional error has the burden of establishing a miscarriage of justice under a "more probable than not" standard. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999); *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999). Reversal is required only, if considering the error and its effect in light of the

strength and weight of the untainted evidence, it affirmatively appears that it is more probable than not that a different outcome would have resulted without the error. *Id.* at 495-496.

We are convinced, under the above standard, that any hearsay evidence of the girls' reports to others of defendant's sexual activity with them, did not contribute to the verdict. SF's own testimony at trial established details of the sexual activity reported to others. Further, defendant confessed to two police officers, orally and in a written statement, that the alleged sexual activity occurred. According to testimony at trial, defendant admitted to police that he fondled SF's breasts and digitally penetrated her vagina. The evidence of defendant's confessions weighs heavily against any claim of prejudice with respect to other witnesses' hearsay testimony of the girls' statements.

Although defendant later attempted to deny the sexual activity and retract his confessions, the trial court ruled that his statements were admissible. Defendant did not challenge references during trial to the admissibility or voluntariness of his confessions. Given the persuasiveness of the untainted evidence, we find any error regarding the hearsay harmless.

III

For the same reason, we find no error requiring reversal with regard to defendant's allegations of prosecutorial misconduct, including references to SF's prior consistent statements and alleged improper bolstering of witnesses' testimony. The trial court sustained defendant's objections to improper vouching and sufficiently cured any prejudice by providing appropriate instruction. We must presume that the jurors followed this instruction. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). We find no error in the trial court's admission of expert testimony concerning typical behaviors of sexual abuse victims. See *Lukity, supra* at 500-501 (reiterating the standards for allowable testimony of child sexual abuse experts).

IV

Finally, we find no error requiring reversal with regard to comments during trial concerning the propriety or admissibility of defendant's confessions. Defense counsel placed the matter of *Miranda*[1] warnings at issue, and raised no objection to the court's subsequent instructions or the prosecutor's redirect on this issue. A criminal defendant may not assign error on appeal to something the defendant's own lawyer deemed proper at trial. *People v Barclay*, 208 Mich App 670, 673; 528 NW2d 842 (1995).

The challenged comments were appropriately directed to the issue of the *Miranda* warnings, raised by the defense. As noted above, defendant did not object to these comments during trial. The court advised the jury that it was entitled to decide whether defendant had volunteered his inculpatory statements. Further, the jury received instructions regarding that which it could consider as evidence, and jurors are presumed to follow their instructions. *Graves, supra* at 486.

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[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

Affirmed.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey