

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GERALD O'CONNOR GRATTON,

Defendant-Appellant.

UNPUBLISHED

January 10, 2008

No. 273921

Wayne Circuit Court

LC No. 06-004392-01

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

PER CURIAM.

Defendant appeals as of right his from jury trial convictions of three counts of criminal sexual conduct in the first degree, MCL 750.520b(1)(a). He was sentenced to life in prison on two of the convictions, and 35-80 years in prison on the remaining conviction. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The convictions stem from a series of sexual assaults on complainant that began when he was approximately seven years old. Defendant is complainant's great-uncle. The assaults continued for a number of years, until complainant began sexually assaulting other children in the neighborhood. Once complainant was incarcerated in a juvenile facility, he revealed the assaults to his therapist, Kristi Wichmann. Complainant later told his mother and the police about the abuse. Complainant testified that he did not initially reveal the abuse because defendant threatened to hurt his family if he did so.

The central issue in this case concerned complainant's veracity. Defendant first argues that complainant's therapist and mother impermissibly vouched for complainant's credibility, and improperly stated their opinion that defendant was guilty. Defense counsel did not object to the introduction of this evidence, and has failed to preserve this issue for appeal. Therefore, to show that reversal is warranted, defendant "must demonstrate plain error that was outcome determinative." *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

It is improper for a witness to express an opinion on the defendant's guilt or innocence of the charged offense. *People v Bragdon*, 142 Mich App 197, 199; 369 NW2d 208 (1985). However, neither Wichmann nor complainant's mother specifically testified that they believed that defendant was guilty. Defendant's objection is also without merit to the extent that it also rests on a claim that the witnesses improperly expressed an opinion about complainant's credibility. It is generally improper for a witness to comment on the credibility of another

witness. *People v Buckey*, 424 Mich 1, 17-18; 378 NW2d 432 (1985). However, testimony concerning the credibility of a witness is permissible under MRE 608(a), “after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.” MRE 608(a)(2). Thus, “[w]here a defense counsel attacks a witness’ character for truthfulness in an opening statement, the prosecution may present evidence that supports the witness’ character for truthfulness on direct examination.” *People v Lukity*, 460 Mich 484, 489; 596 NW2d 607 (1999). Here, defendant’s defense was that the incidents did not occur, and that complainant was lying. During his opening statement, defense counsel questioned the credibility of the evidence and complainant, and stated that the prosecutor had a ‘bad complainant’ whom the people at the juvenile facility did not trust or believe. Counsel also stated that these witnesses would testify that complainant was “manipulative” and a liar. These remarks were clear attacks on complainant’s character for truthfulness. Cf. *Lukity, supra* (defense counsel’s assertion that the victim had emotional problems that affected her ability to recount and describe the charged incident was an attack upon the victim’s credibility, not her reputation for truthfulness). Defense counsel further attacked complainant’s reputation for truthfulness by directly and extensively questioning complainant as to whether he had the reputation of a liar. Counsel also explored in detail the therapist’s reports that complainant was dishonest about his inappropriate sexual behavior with his peers, that he was manipulative with others, and that he had initially denied his own victimization. Counsel also asked Wichmann whether she felt that complainant had manipulated his mother. Under the circumstances, the trial court did not abuse its discretion in permitting the prosecution to introduce testimony from the therapist and complainant’s mother regarding their opinions as to complainant’s character for truthfulness.

We further find that defendant has failed to demonstrate that trial counsel rendered ineffective assistance by not challenging the introduction of this testimony. The testimony was not improper; therefore, counsel’s decision not to challenge its introduction did not constitute ineffective assistance. Counsel is not ineffective for failing to make a futile objection. *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998).

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Michael R. Smolenski