STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 20, 2016
v	No. 329470 Van Buren Circuit Court
MICHAEL RAY GWILLIAMS, Defendant-Appellant.	LC No. 15-019790-FC

Before: WILDER, P.J., and MURPHY and O'BRIEN, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a) (victim was under 13 years of age). The trial court sentenced defendant as a second-offense habitual offender, MCL 769.10, to 25 to 30 years' imprisonment. We affirm.

This case stems from multiple incidents that occurred between November 2011 and October 2013. At trial, the victim testified that defendant, her grandfather, penetrated her vagina with his finger and engaged in other sexual improprieties with the victim on numerous occasions. On appeal, defendant first argues that the trial court abused its discretion in denying a challenge for cause where a venireperson indicated that child abuse in her family's history would affect her ability to adhere to the standard of proof of beyond a reasonable doubt. "We review for abuse of discretion a trial court's rulings on challenges for cause based on bias." *People v Williams*, 241 Mich App 519, 521; 616 NW2d 710 (2000). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *People v Duncan*, 494 Mich 713, 722-723; 835 NW2d 399 (2013). "This Court defers to the trial court's superior ability to assess from a venireman's demeanor whether the person would be impartial." *Williams*, 241 Mich App at 522.

In *People v Lee*, 212 Mich App 228, 248-249; 537 NW2d 233 (1995), this Court stated as follows:

> A four-part test is used to determine whether an error in refusing a challenge for cause merits reversal. There must be a clear and independent showing on the record that (1) the court improperly denied a challenge for cause, (2) *the aggrieved party exhausted all peremptory challenges*, (3) the party demonstrated the desire to excuse another subsequently summoned juror, and (4)

> the juror whom the party wished later to excuse was objectionable. *People v Legrone*, 205 Mich App 77, 81; 517 NW2d 270 (1994). [Emphasis added.]

Defendant exercised only five of his twelve available peremptory challenges. Accordingly, reversal is not required and defendant's appellate argument fails. *Legrone*, 205 Mich App at 82. Moreover, even on substantive review, there was no abuse of discretion by the trial court in denying the challenge for cause.

A criminal defendant has a constitutional right to be tried by an impartial jury. US Const, Am VI; Const 1963, art 1, § 20. It is grounds for a challenge for cause when a venireperson is biased, "shows a state of mind that will prevent the person from rendering a just verdict, . . . has formed a positive opinion on the facts of the case or on what the outcome should be," or when he or she "has opinions or conscientious scruples that would improperly influence the person's verdict." MCR 2.511(D)(2)-(4). "Jurors are presumed to be competent and impartial and the burden of proving otherwise is on the party seeking disqualification." *People v Walker*, 162 Mich App 60, 63; 412 NW2d 244 (1987). In *Irvin v Dowd*, 366 US 717, 723; 81 S Ct 1639; 6 L Ed 2d 751 (1961), the United States Supreme Court observed the following regarding the presumption:

> To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

In the present case, the juror at issue indicated that members of her family had been sexually abused as children by a relative in law enforcement. She informed the trial court that she felt "mixed" about whether she "could be fair." However, the juror also stated that she would not be biased for or against either party, that she could follow the law as instructed upon by the court, that she was going to try and not let her family's history cloud her judgment, and that she would definitely attempt to abide by the evidentiary standard of proof beyond a reasonable doubt. As noted by the trial court, the juror's statements indicated a willingness to set aside her personal experiences and to render a verdict in accordance with the law and evidence presented in the case. *Irvin*, 366 US at 723. And the trial court was ultimately in the best position to evaluate the juror's statements and to judge her credibility. *Williams*, 241 Mich App at 522. Defendant has not demonstrated that the trial court's denial of the challenge for cause fell outside a range of reasonable and principled outcomes; there was no abuse of discretion.

Defendant also argues that there was insufficient evidence of penetration as required to establish CSC I. We disagree. We review de novo the issue regarding whether there was sufficient evidence to sustain a conviction. *People v Lueth*, 253 Mich App 670, 680; 660 NW2d 322 (2002). In reviewing the sufficiency of the evidence, this Court must view the evidence – whether direct or circumstantial – 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 proved beyond a reasonable doubt. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012); *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). A jury, and not an appellate court, observes the witnesses and listens to their testimony; therefore, an appellate court must not

interfere with the jury's role in assessing the weight of the evidence and the credibility of the witnesses. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992). Circumstantial evidence and the reasonable inferences that arise from such evidence can constitute satisfactory proof of the elements of a crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). The prosecution need not negate every reasonable theory of innocence, but need only prove the elements of the crime in the face of whatever contradictory evidence is provided by the defendant. *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). We resolve all conflicts in the evidence in favor of the prosecution. *People v Kanaan*, 278 Mich App 594, 619; 751 NW2d 57 (2008).

Defendant was charged with CSC I under MCL 750.520b(1)(a), requiring the prosecutor to prove that defendant sexually penetrated a victim and that the victim was under 13 years of age at the time. Defendant does not dispute that the victim was under 13 years of age when the sexual molestation occurred; rather, he asserts that there was insufficient evidence of penetration. Pursuant to MCL 750.520a(r), "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." Evidence of penetration of the labia majora is sufficient to fulfill the sexual penetration element of CSC I. *People v Bristol*, 115 Mich App 236, 238; 320 NW2d 229 (1981).

Viewing the evidence in the light most favorable to the prosecutor, the victim's testimony provided the jury with sufficient evidence to conclude that defendant had sexually penetrated the child. See MCL 750.520h ("The testimony of a victim need not be corroborated in prosecutions under sections 520b to 520g."). At trial, the victim testified that defendant "would slip his hand down [her] pants" and then "put his finger in." She indicated that he put his middle finger in, noting that she "felt one finger down" and the "other fingers on the side." The victim further and more conclusively testified that defendant "put his finger into [her] female part." Although defendant argues that the victim's testimony was inconclusive as to where defendant put his finger, arguing that it could have meant in her pants or underwear, the victim clearly stated that defendant "put his finger into [her] female part." This testimony alone was sufficient to establish the element of penetration. MCL 750.520a(r). Viewing all of the evidence in a light most favorable to the prosecution and resolving all evidentiary conflicts in the prosecution's favor, along with deferring to the jury's assessment of the victim's credibility, there was sufficient evidence to support the conviction for CSC I.

Affirmed.

/s/ Kurtis T. Wilder
/s/ William B. Murphy
/s/ Colleen A. O'Brien