

STATE OF MICHIGAN
COURT OF APPEALS

In re SETH LYNN-COLE EASTMAN.

PEOPLE OF THE STATE OF MICHIGAN,

Petitioner-Appellee,

v

SETH LYNN-COLE EASTMAN,

Respondent-Appellant.

UNPUBLISHED

March 13, 2018

No. 336934

St. Joseph Circuit Court

Family Division

LC No. 2014-019418-DL

Before: O'CONNELL, P.J., and HOEKSTRA and SWARTZLE, JJ.

PER CURIAM.

Respondent, Seth Lynn-Cole Eastman, appeals as of right an order of disposition entered in juvenile delinquency proceedings. Following a bench trial, the trial court found that respondent committed one count of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(a) (sexual penetration with another less than 13 years of age), and one count of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(a) (sexual contact with another less than 13 years of age). The charges related to conduct against respondent's stepsister, who was 11 years old and who testified about the conduct. Respondent now challenges the complainant's competency to testify and the trial court's denial of respondent's motion for a new trial. We affirm.

I. COMPETENCY OF THE CHILD WITNESS

Respondent first argues that the trial court erroneously failed to question the key child witness to determine whether she was competent to testify. Respondent did not raise this issue in the trial court. Respondent's "failure to object to the admission of the testimony of a child witness as incompetent waived his right to assert error on appeal." *People v Cobb*, 108 Mich App 573, 575; 310 NW2d 798 (1981).

Even if respondent had made a timely objection, respondent has failed to demonstrate that the trial court abused its discretion. This Court reviews a trial court's determination of a child witness's competency for an abuse of discretion. *People v Coddington*, 188 Mich App 584,

597; 470 NW2d 478 (1991). “An appellate court will defer to the trial court’s resolution of factual issues, especially where it involves the credibility of witnesses.” *People v Cartwright*, 454 Mich 550, 555; 563 NW2d 208 (1997).

“Unless the court finds after questioning a person that the person does not have sufficient physical or mental capacity or sense of obligation to testify truthfully and understandably, every person is competent to be a witness except as otherwise provided in these rules.” MRE 601. “There is a presumption of competency which may be rebutted by showing that the witness does not have sufficient capacity or sense of obligation to testify truthfully or understandably.” *Coddington*, 188 Mich App at 597.

On the facts of this case, we cannot say that the trial court abused its discretion by allowing the child witness to testify. Considering the trial court’s experience with children testifying about sexual abuse, the trial court stated that the child was “extremely believable[.]” The trial court also noted that the child witness was hesitant to say what happened, which, in the trial court’s experience, was “normal for a child who is telling the truth.” Given the trial court’s conclusions regarding the child witness’s credibility, it is clear that the trial court observed the witness closely and determined that she testified truthfully. The trial court impliedly made a determination that she was competent to testify. The trial court did not abuse its discretion by allowing the witness to testify.

II. MOTION FOR NEW TRIAL

Respondent next argues that the trial court erred by denying his motion for a new trial. In juvenile delinquency proceedings,

a party may seek a rehearing or new trial by filing a written motion stating the basis for the relief sought within 21 days after the date of the order resulting from the hearing or trial. . . . The court may entertain an untimely motion for good cause shown. A motion will not be considered unless it presents a matter not previously presented to the court, or presented, but not previously considered by the court, which, if true, would cause the court to reconsider the case. [MCR 3.992(A).]

The trial court should grant a motion for a new trial in juvenile delinquency proceedings if, “in light of the new evidence presented, it appears to the trial court that a failure to grant the juvenile a new trial would be inconsistent with substantial justice.” *In re Alton*, 203 Mich App 405, 409-410; 513 NW2d 162 (1994).

In this case, respondent did not file the motion until approximately seven months after the trial court entered its order of adjudication. Therefore, the motion was untimely, and the trial court was only required to consider the motion upon a showing of good cause.

Respondent’s motion for a new trial primarily relied on an affidavit from his grandmother, which stated that she attended the bench trial and that she observed respondent’s father providing visual cues to the key child witness while she testified to indicate when she should become emotional. Even if true, respondent’s grandmother knew about this courtroom conduct on the date of trial, yet respondent offers no reason why he could not have filed the

motion for a new trial within the 21-day period. Respondent provides no explanation for the seven-month delay in bringing the motion for new trial. Additionally, respondent's motion essentially attacked the credibility of the child's testimony. The trial court found the child witness believable, so the trial court was not likely to reconsider its ruling on the basis of respondent's untimely attack upon the child witness's credibility.

Respondent also argues that the trial court abused its discretion by denying the motion without holding a hearing. The trial court "need not hold a hearing before ruling on a motion." MCR 3.992(E). Respondent has not demonstrated how a hearing would have been productive when his motion for a new trial failed to meet the requirements of MCR 3.992(A). Therefore, the trial court did not abuse its discretion by ruling on the motion without holding a hearing.

Finally, respondent faults his prior attorney for failing to impeach the child witness's credibility during trial and for agreeing to proceed without the defense's character witness. To establish ineffective assistance of counsel warranting reversal, the respondent must show that "counsel's performance fell below an objective standard of reasonableness" and was so prejudicial that it deprived the respondent of a fair trial. *In re Ayres*, 239 Mich App 8, 21; 608 NW2d 132 (1999) (citation and quotation marks omitted). Respondent identifies the forensic video interview as relevant to the witness's credibility, but he does not describe inconsistencies between the video and the witness's testimony that would have impeached her credibility. Likewise, respondent criticizes trial counsel for failing to push for an adjournment to wait for respondent's character witness to arrive. Respondent has not shown how this character witness's testimony affected the outcome of the proceeding when that character witness had no knowledge of the events in question. Accordingly, respondent has not shown that his trial counsel's performance deprived him of a fair trial. In sum, the trial court did not abuse its discretion by denying respondent's motion for a new trial.

We affirm.

/s/ Peter D. O'Connell
/s/ Joel P. Hoekstra
/s/ Brock A. Swartzle