

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
November 22, 2011

v

CALVIN SYLVESTER WILLIAMS,
Defendant-Appellant.

No. 298152
Wayne Circuit Court
LC No. 09-020320-FC

Before: K. F. KELLY, P.J., and METER and GLEICHER, JJ.

PER CURIAM.

Defendant appeals as of right from his bench-trial convictions of two counts of criminal sexual conduct (CSC) in the first degree, MCL 750.520b(1)(b)(i) (sexual penetration of a victim at least 13 but less than 16 years of age by an actor that is a member of the same household as the victim), and CSC in the second degree, MCL 750.520c(1)(b)(i) (sexual contact with a victim that is at least 13 but less than 16 years of age by an actor that is a member of the same household as the victim). The trial court sentenced defendant to 15 to 40 years in prison for the two counts of first-degree CSC and to time served for second-degree CSC. We affirm.

Defendant argues that the trial court improperly expanded the scope of MRE 801(d)(1)(B) when it allowed Detroit Police Sex Crimes Unit Investigator Kimberly Turner to read the complainant's entire statement to her into the record to rebut the introduction of an inconsistent statement. We disagree.

We will not disturb a trial court's decision to admit or exclude evidence unless the court abused its discretion. *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). Preliminary questions of law relating to the admission of evidence require a de novo review. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). If a trial court admits evidence that is inadmissible as a matter of law, it abuses its discretion. *Id.*

Defendant argues that the trial court improperly allowed the prosecution to bolster the complainant's testimony by having Turner read the complainant's entire narrative statement. Under MRE 801(d)(1)(b), a statement that is "consistent with the declarant's testimony and is offered to rebut an express or implied charge against the declarant of recent fabrication or improper influence or motive" is admissible as non-hearsay in certain circumstances. See also

People v McCray, 245 Mich App 631, 641-642; 630 NW2d 633 (2001). To introduce a statement under MRE 801(d)(1)(B), the offering party must meet the following requirements:

(1) the declarant must testify at trial and be subject to cross-examination; (2) there must be an express or implied charge of recent fabrication or improper influence or motive of the declarant's testimony; (3) the proponent must offer a prior consistent statement that is consistent with the declarant's challenged in-court testimony; and, (4) the prior consistent statement must be made prior to the time that the supposed motive to falsify arose. [*People v Jones*, 240 Mich App 704, 706; 613 NW 2d 411 (2000) (internal citations and quotation marks omitted).]

See also *People v Edwards*, 139 Mich App 711, 715; 362 NW2d 775 (1984). Defense counsel showed that the complainant's in-court testimony was inconsistent in certain respects with the statement that the complainant made to Turner. The trial court allowed the prosecution to introduce the rest of the complainant's statement to rehabilitate her credibility and to counter defense counsel's implicit assertion that the complainant lied or fabricated or exaggerated her story. In *People v Sayles*, 200 Mich App 594, 595; 504 NW2d 738 (1993), this Court rejected an argument similar to defendant's by stating the following:

Defendant first argues that the trial court improperly allowed the girl's testimony to be buttressed by the introduction of prior consistent statements she made accusing defendant of this crime. We disagree. Defendant impeached the girl's credibility by introducing portions of the prior statements to show how they were inconsistent with her trial testimony. Under these circumstances, the prosecution must be allowed to explore the extent of the inconsistencies by showing how those same statements were consistent with the girl's trial testimony.

Accordingly, the trial court did not improperly allow the prosecution to explore the other consistent statements the complainant made to Turner. Defense counsel highlighted that the complainant's story changed from her initial statements to the statements she made in court and thus implied that the complainant fabricated parts of her story. In response, the prosecution demonstrated to the trial court, with the consistent statements she made to Turner, that the complainant did not change or fabricate her story in several respects, implicitly leaving the trial court with the impression that there may have been other reasons for the inconsistencies.¹ Especially in light of *Sayles, id.*, we conclude that the trial court did not improperly allow Turner to read the complainant's entire statement during the bench trial.

Even if an error *had* occurred, we would presume that it is not a "ground for reversal unless it affirmatively appears that, more probably than not, it was outcome determinative." *People v Krueger*, 466 Mich 50, 54; 643 NW2d 223 (2002). An evidentiary error is "outcome determinative if it undermine[s] the reliability of the verdict." *People v Elston*, 462 Mich 751,

¹ The trial court found the complainant's story to be true and implied that the inconsistencies or discrepancies could have existed for other reasons, such as youthfulness or trauma from the incident.

766; 614 NW2d 595 (2000). In reviewing an error's effect on the verdict, we "focus on the nature of the error in light of the weight and strength of the untainted evidence." *Id.*

In referring to the complainant's statement to Turner, the trial court implicitly addressed the inconsistencies by stating that "there are some things that I think [the complainant] might have seen a little bit differently than what they were."² The trial court did not state that it believed the complainant's story because of the introduction of the statement she made to Turner. To the contrary, the trial court implicitly stated that it had doubts about one portion of her story because of the inconsistencies between the complainant's in-court testimony and the statement she made to Turner.³ The record fails to demonstrate that the introduction of the statement to Turner improperly bolstered the complainant's credibility.⁴ Moreover, the complainant's testimony was supported by the testimony of other witnesses. For example, on several occasions after the incident, defendant apologized or otherwise referred to the incident to the complainant and others. Defendant has failed to show that the introduction of the challenged evidence was outcome-determinative.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Patrick M. Meter

² The trial court also referred to the complainant's young age in making its findings. This suggests that the trial court considered the complainant's young age as a factor in assessing the complainant's reactions, decisions, and statements made shortly after the incident.

³ The trial court also stated, at one point in the trial, that it had in its notes that defendant provided impeachment evidence.

⁴ In addition, under the doctrine of completeness, if one party introduces a portion of writing, "an adverse party may require him at that time to introduce any other part . . . which ought in fairness to be considered contemporaneously with it." See MRE 106. Although we need not resolve this issue, the entire statement to Turner may have been admissible under this rule.