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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRY LEE HORNE,

Defendant-Appellant.

UNPUBLISHED
December 26, 2025
9:32 AM

No. 371232
Genesee Circuit Court
LC No. 2021-048878-FC

Before: KOROBKIN, P.J., and MURRAY and MALDONADO, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of two counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(a) and MCL 750.520b(2)(b). The trial court sentenced defendant to 25 to 80 years' imprisonment for each CSC-I conviction, to be served consecutively. We affirm defendant's convictions against his claims that the trial court violated his due-process rights by referring to jurors only by numbers and infringed his confrontation right by allegedly permitting the victim to testify with her face obscured. However, we vacate defendant's sentence and remand this case for resentencing for the purpose of amending defendant's judgment of sentence to reflect that the sentences are concurrent rather than consecutive.

I. BACKGROUND

The victim disclosed to her great-grandmother and her mother that defendant, her mother's boyfriend, had been sexually assaulting her inside the family home. The abuse occurred over a four-month period and involved acts of penile penetration of the victim's vagina while she was under the age of 13, and when defendant was around the age of 30. The victim initially testified at trial that defendant assaulted her at least three to four times. After reviewing the preliminary-examination transcript, though, she clarified that the number was at least seven times. The victim confirmed that two of these incidents occurred in different rooms inside the home on different days. A police officer interviewed defendant, and he admitted that he had vaginal intercourse with the victim twice, inside the home, on different days. Defendant was arrested, and the case continued to a trial.

Outside the presence of the jury, the trial court asked both parties whether they had received "juror packets" containing information obtained from juror questionnaires. Both parties agreed that they had received these packets. The trial court subsequently requested both parties refer to the potential jurors by number instead of by name. The trial court stated that it preferred referring to the jurors by number based on feedback from past jurors and to avoid making the jurors feel uncomfortable. Once the jury pool entered the courtroom, the court advised potential jurors that it would identify jurors by number instead of by name to avoid "yelling [their] names out in court all the time." Neither party objected.

During trial, outside the presence of the jury, but before the victim testified, the trial court addressed the issue of the victim wearing a hat in the courtroom. The victim arrived to court wearing a baseball-style hat connected to a wig that partially obscured her face. Defense counsel objected to the victim wearing the hat during her testimony and argued that it would have impaired the jury's ability to assess her credibility. The trial court asked the victim to remove the hat, and a video recording of the courtroom confirmed that the victim was not wearing a hat during her testimony. After trial, the jury convicted defendant of two CSC-I charges.

At sentencing, the prosecutor stated to the trial court that it had the discretion to sentence defendant consecutively under MCL 750.520b(3). Defendant did not object to this statement, but requested the trial court not sentence him to consecutive terms of imprisonment. Nevertheless, the trial court sentenced defendant to consecutive terms of 25 to 80 years' imprisonment for each CSC-I conviction. Defendant now appeals.

II. ANALYSIS

A. ANONYMOUS JURY

Defendant first argues that his constitutional due-process rights were violated because the trial court referred to the potential jurors by number instead of their names during voir dire. He argues that the trial court should have instructed the jurors to ensure that they did not consider this fact as a negative against his presumed innocence. We disagree.

To preserve a challenge to the trial court's decision to refer to jurors by number rather than by name, a defendant must object to that decision in the trial court. *People v Hanks*, 276 Mich App 91, 92; 740 NW2d 530 (2007). Because defendant did not raise this issue in the trial court, it is unpreserved. We review unpreserved issues for plain error, regardless of whether the issue has constitutional implications. *People v Thorpe*, 504 Mich 230, 252; 934 NW2d 693 (2019). Under plain-error review, "a defendant must prove that (1) error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected substantial rights." *People v Davis*, 509 Mich 52, 67; 983 NW2d 325 (2022) (quotation marks and citation omitted). "An error has affected a defendant's substantial rights when there is a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings." *People v Walker*, 504 Mich 267, 276; 934 NW2d 727 (2019) (quotation marks and citation omitted).

"An 'anonymous jury' is one in which certain information is withheld from the parties, presumably for the safety of the jurors or to prevent harassment by the public." *People v Williams*, 241 Mich App 519, 522; 616 NW2d 710 (2000) (citation omitted). Courts have recognized that

using an "anonymous jury" has the potential to impact "two interests of the defendant: (1) the defendant's interest in being able to conduct a meaningful examination of the jury and (2) the defendant's interest in maintaining the presumption of innocence." *Id*. at 522-523. "In order to successfully challenge the use of an 'anonymous jury,' the record must reflect that the parties have had information withheld from them, thus preventing meaningful voir dire, or that the presumption of innocence has been compromised." *Id*. See also *Hanks*, 276 Mich App at 93.

Defendant relies heavily on several federal cases, quoting portions that discuss considerations relevant to addressing jurors by name rather than by number. Although those quotations appear to support his position, the cases themselves do not. Each of the authorities he cites ultimately holds that the use of juror numbers, in the absence of demonstrated prejudice, does not constitute reversible error. In this case, defendant has offered no evidentiary basis to substantiate his assertion that he suffered prejudice from the trial court's decision to refer to jurors by number rather than by name. Contrary to defendant's implicit assertion that he was unable to conduct meaningful voir dire, the record establishes that his trial counsel received a "juror packet" containing pertinent biographical information related to the potential jurors. Moreover, the record establishes that defense counsel conducted extensive voir dire; in particular, defense counsel exercised several peremptory challenges. Therefore, there is no evidence to support defendant's argument that his ability to conduct voir dire was obstructed. See *Williams*, 241 Mich App at 523 ("There is nothing in the record to support the conclusion that any information was actually withheld from the parties. At most, the names of the jurors were replaced by numbers.").

Defendant also argues that his presumption of innocence was compromised because the trial court did not properly instruct the jurors as to how they should perceive reference to them by number instead of by name. We have cautioned trial courts to give such an instruction and to limit the cases where juror numbers are used instead of names. *Williams*, 241 Mich App at 524; *Hanks*, 276 Mich App at 94. We have also held that it is proper to decline to review claims of prejudice in the withholding of jurors' names when there is no evidence in the record of prejudice. *Williams*, 241 Mich App at 524.

In this case, there is no evidence in the record to suggest that the jurors construed the use of numbers as a negative to be held against defendant. The record suggests that both the trial court and the jurors understood the use of numbers as a purely logistical choice devoid of any greater meaning. See *id*. at 524-525; *Hanks*, 276 Mich App at 94. Therefore, we conclude that defendant's due-process rights were not violated by using juror numbers instead of names at trial.

B. CONFRONTATION CLAUSE

Defendant next argues that his constitutional right to confront the witnesses against him was violated because the trial court allowed the victim to testify while wearing a hat that partially obscured her face to the jury. We disagree.

Whether a defendant's right of confrontation has been violated is reviewed de novo. *People v Washington*, 514 Mich 583, 592; 22 NW3d 507 (2024). Under the de novo standard, we review the issue independently without any deference to the courts below. *Id*.

"The Sixth Amendment of the United States Constitution and Article 1, § 20 of Michigan's Constitution provide a defendant with the right to confront the witnesses against him." *Washington*, 514 Mich at 592. "The right of confrontation insures that the witness testifies under oath at trial, is available for cross-examination, and allows the jury to observe the demeanor of the witness." *Id*. (quotation marks and citation omitted). Under certain circumstances, a trial court may limit a defendant's right to face his or her accuser in person and in the same courtroom without violating that defendant's constitutional rights. See *People v Rose*, 289 Mich App 499, 515-517; 808 NW2d 301 (2010). See also MCL 600.2136a.

In this case, defendant argues that the trial court allowed the victim to testify while wearing a hat that partially obscured her face. He argues further that this decision violated his constitutional rights because the jury was unable to see the victim's face and reactions while she testified and, therefore, the jury was impaired in its ability to assess her credibility. However, this argument is entirely misplaced. Video footage of the courtroom depicting the victim's cross-examination testimony clearly shows that the victim was not wearing a hat. Moreover, her face was fully visible throughout her testimony. The record also indicates that the jury was closely observing her testimony because it submitted at least one clarifying question for the trial court to ask the victim directly. Accordingly, this claim lacks merit.

C. CONSECUTIVE SENTENCING

Defendant's final argument on appeal is that the trial court lacked statutory authority to sentence him to consecutive sentences under MCL 750.520b(3). The prosecutor concedes and agrees on appeal that defendant was entitled to concurrent sentencing under MCL 750.520b(3).

MCL 750.520b(3) states that "[t]he court may order a term of imprisonment imposed under this section to be served consecutively to any term of imprisonment imposed for any other criminal offense arising from the same transaction." Although the phrase "same transaction" is not defined in the statute, this Court has held that crimes committed in a continuous time sequence constitute crimes committed in the same transaction. *People v Ryan*, 295 Mich App 388, 402; 819 NW2d 55 (2012).

In this case, the victim disclosed, and defendant admitted to the police, that the criminal acts occurred on separate days. Accordingly, the two events that defendant was convicted of were not "part of a continuous time sequence," and the statutory discretion to impose a consecutive sentence under MCL 750.520b(3) was not triggered. *People v Bailey*, 310 Mich App 703, 725; 873 NW2d 855 (2015) (quotation marks and citation omitted). Therefore, the trial court's decision to impose consecutive sentences without proper statutory authority was plain error. *Bailey*, 310 Mich App at 726. Because we conclude that the trial court erred in sentencing defendant to consecutive sentences, we need not address defendant's argument in the alternative that his counsel was ineffective for failing to object to the consecutive sentencing. See *Bailey*, 310 Mich App at 728 ("[D]efense counsel's failure to challenge the conclusion that the defendant was subject to consecutive sentencing likely constituted ineffective assistance. However, since we remand the case for resentencing, we need not address trial counsel's performance in this regard.").

III. CONCLUSION

We affirm defendant's convictions, vacate defendant's sentence, and remand for resentencing for the purpose of amending his judgment of sentence to reflect that his sentences are concurrent rather than consecutive.

We do not retain jurisdiction.

/s/ Daniel S. Korobkin
/s/ Christopher M. Murray
/s/ Allie Greenleaf Maldonado