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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v ERIC ALFONSO LOVE, Defendant-Appellant.	UNPUBLISHED September 11, 2026 2:26 PM No. 370917 Wayne Circuit Court LC No. 22-005724-01-FC

Before: BAZZI, P.J., and PATEL and ACKERMAN, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of engaging a minor for commercial sexual activity, MCL 750.462e(a),[1] for which the trial court sentenced him to 6 to 20 years' imprisonment. On appeal, defendant raises claims of instructional error and challenges the sufficiency of the evidence to support his conviction. He also argues that the trial court imposed a disproportionate departure sentence that it failed to justify adequately. We affirm defendant's conviction but vacate his sentence and remand for resentencing.

I. BACKGROUND

This case arises from events in January 2022 involving IJ, who was then 14 years old. IJ had run away from home and was staying with her friend, EH, when the two girls were invited by another friend, LR, to a house on Rossini Drive in Detroit. IJ and EH, who did not bring cell phones or money, were then taken to the house in an Uber arranged by LR. When the girls arrived, they met defendant, who asked them to engage in prostitution, but they declined the request. IJ and EH spent the night, sleeping in a room with defendant and LR.

[1] The jury acquitted defendant of participating in a human trafficking enterprise involving kidnapping, criminal sexual conduct, or death, MCL 750.462d(b), accepting the earnings of a prostitute, MCL 750.457, and assault with a dangerous weapon, MCL 750.82.

The next day, defendant revealed his expectation that IJ and EH would have sexual intercourse with various men, including his codefendant, Kevin Hampton. When IJ and EH asked LR if they could use a cell phone to call for a ride home, LR asked defendant if the girls could use his cell phone. Defendant became violent with LR and refused to allow the girls to use his phone. After a discussion with defendant, IJ was led to believe she would receive "a lot" of money by having sexual intercourse with Hampton. She also felt that she did not have a choice but to engage in sexual intercourse with Hampton, explaining: "We needed to go. So I did it out of that." After IJ and Hampton had intercourse,[2] defendant gave her $30. She felt "tricked out of the money," and an argument ensued. Defendant threatened to shoot IJ and EH before he left the house. The girls then left and contacted the police, who interviewed the girls before obtaining and executing a search warrant at the Rossini home. Defendant was not there when the warrant was executed but was later arrested.

At trial, defendant maintained that he did not arrange for any of the men in the house to have sexual intercourse with LR, IJ, or EH. However, the jury found him guilty of engaging a minor for commercial sexual activity. At sentencing, the trial court calculated the sentencing guidelines minimum range to be 3 to 5 years' imprisonment, and it imposed an upward departure sentence of 6 to 20 years. This appeal followed.

II. DISCUSSION

A. JURY INSTRUCTIONS

Defendant raises several claims of instructional error. First, he claims that the trial court denied him a properly instructed jury because it failed to define certain statutory terms used in MCL 750.462e when it gave the relevant instruction, M Crim JI 36.6 (using minors for commercial sexual activity). Second, he contends that the trial court erred by giving the jury the general unanimity instruction, M Crim JI 3.11, because he was entitled to a specific unanimity instruction under *People v Cooks*, 446 Mich 503; 521 NW2d 275 (1994). Finally, he submits that M Crim JI 36.7 (victim's testimony need not be corroborated) and M Crim JI 36.8 (victim's resistance or lack of resistance not relevant) invaded the province of the jury by instructing it how to weigh the evidence in violation of *People v Reed*, 393 Mich 342; 224 NW2d 867 (1975).

To preserve a claim of instructional error, a defendant must raise the challenge in the trial court. *People v Czuprynski*, 325 Mich App 449, 466; 926 NW2d 282 (2018). In this case, however, defendant did not merely fail to preserve his instructional challenges by raising them in the trial court;[3] he affirmatively waived those claims. "[W]aiver is the intentional relinquishment

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[2] Hampton was charged as a codefendant and ultimately pleaded guilty to third-degree criminal sexual conduct, MCL 750.520d(1)(a). He is not a party to this appeal.

[3] On appeal, defendant erroneously asserts that he preserved his instructional challenges by objecting to the proposed verdict form. But a claim of instructional error is preserved only when the defendant raised the *same* claim of instructional error in the trial court as he or she later asserts on appeal. *Czuprynski*, 325 Mich App at 466. Accordingly, defendant's objection to the verdict form did not preserve his appellate challenges to the substantive instructions.

or abandonment of a known right." *People v Carines,* 460 Mich 750, 762 n 7; 597 NW2d 130 (1999) (cleaned up). A defendant who expressly approves the jury instructions may not later seek appellate review of those instructions, "for his waiver has extinguished any error." *People v Kowalski*, 489 Mich 488, 503; 803 NW2d 200 (2011) (citation omitted).

After the parties rested, the trial court reviewed the proposed jury instructions with counsel. During that discussion, the court asked whether the parties had any objections to M Crim JI 3.11, 36.6, 36.7, and 36.8, and defense counsel stated that he had "[n]o objection" to those instructions. That affirmative approval of the instructions waived the claims of instructional error defendant now raises on appeal. See *id*. at 504-505.

B. SUFFICIENCY OF THE EVIDENCE

We review challenges to the sufficiency of the evidence de novo, reviewing the evidence "in a light most favorable to the prosecutor to determine whether any [trier] of fact could find the essential elements of the crime were proven beyond a reasonable doubt." *People v Baskerville*, 333 Mich App 276, 282; 963 NW2d 620 (2020) (citation omitted). We "draw all reasonable inferences and make credibility choices in support of the jury verdict" and resolve all evidentiary conflicts in favor of the prosecution. *Id*. at 282-283 (citation omitted).

Due process requires the prosecution to prove every element of an offense beyond a reasonable doubt. *People v Smith*, 336 Mich App 297, 308; 970 NW2d 450 (2021). To support a conviction of engaging a minor for commercial sexual activity contrary to MCL 750.462e(a), the prosecution must establish that: (1) "the defendant recruited, enticed, harbored, transported, provided, or obtained [the complainant] for commercial sexual activity"; (2) at the time of the offense, the complainant was "less than 18 years old, regardless of whether the defendant knew [he or she] was less than 18 years old"; and (3) "the defendant intended that [the complainant] would perform" commercial sexual activity, whether or not such activity actually occurred. M Crim JI 36.6. "Commercial sexual activity means performing acts of sexual penetration or contact, child sexually abusive activity, or a sexually explicit performance." *Id*. (citations omitted). Defendant does not dispute that the evidence was sufficient to establish that IJ was less than 18 years old at the time of the instant offense.

In this case, IJ testified that defendant paid for the Uber LR sent to transport IJ and EH to the house on Rossini Drive. Defendant asked the girls to engage in prostitution when they arrived. Despite the girls declining that request, defendant repeatedly pressed them to engage in sex acts for "a lot of money." The next day, defendant enticed IJ to have intercourse with Hampton with the promise of money. When LR asked to use defendant's phone so IJ and EH could call for a ride home, defendant became violent with LR and refused to allow the girls to use his phone.

IJ testified that she felt pressured to have intercourse with Hampton so she and EH could earn enough money to leave. Defendant and Hampton went upstairs together before the encounter, and Hampton paid defendant. After the encounter, defendant paid IJ $30. When IJ complained that defendant paid her less than promised, defendant became angry and threatened to shoot IJ and EH.

That evidence was sufficient to establish that defendant "recruited, enticed, harbored, transported, provided, or obtained [IJ] for commercial sexual activity" with the intent that she would perform such activity. Defendant's conduct in repeatedly pressuring the girls to engage in sexual activity for money supports a finding that he recruited or enticed the girls into performing commercial sexual activity. Evidence that he paid for the Uber that transported the girls to the Rossini address and immediately asked the girls to engage in prostitution supports an inference that defendant arranged or paid for IJ's transportation to the house for that purpose. Further, IJ's testimony that Hampton paid defendant for her services, and defendant then paid her, supports a finding that defendant provided IJ for commercial sexual activity.

Defendant's suggestion that IJ "took it upon herself" to engage in sexual activity with Hampton is unpersuasive. A conviction under MCL 750.462e does not require that the minor be unwilling, and defendant's statement that IJ "could make money," coupled with his subsequent payment to her, supports the inference that he induced the transaction and intended that it occur. The jury was entitled to disbelieve defendant's testimony that he did not arrange for or profit from any sexual activity at the house. Moreover, IJ testified that she did not want to have intercourse with Hampton and did so only because she felt pressured, and we must resolve all evidentiary conflicts in favor of the prosecution. See *Baskerville*, 333 Mich App at 283.

Viewed in the light most favorable to the prosecution, there was sufficient evidence from which a rational juror could conclude that defendant "[r]ecruit[ed], entice[d], harbor[ed], transport[ed], provide[d], or obtain[ed] by any means a minor for commercial sexual activity." MCL 750.462e(a).

C. PROPORTIONALITY

"We review a trial court's upward departure from a defendant's calculated guidelines range for reasonableness," and the reasonableness of a sentence is reviewed for an abuse of discretion. *People v Walden*, 319 Mich App 344, 351; 901 NW2d 142 (2017). An abuse of discretion occurs when the trial court imposes a sentence disproportionate "to the seriousness of the circumstances surrounding the offense and the offender." *People v Abcumby-Blair*, 335 Mich App 210, 241; 966 NW2d 437 (2020) (citation omitted). An upward departure constitutes an abuse of discretion if the trial court fails to "provide adequate reasons for the extent of the departure sentence imposed." *People v Steanhouse*, 500 Mich 453, 476; 902 NW2d 327 (2017).

Although the sentencing guidelines are advisory, "they remain a highly relevant consideration in a trial court's exercise of sentencing discretion," and trial courts must consult the guidelines when imposing a sentence. *People v Lockridge*, 498 Mich 358, 391; 870 NW2d 502 (2015). A trial court may depart from the guidelines as long as the sentence imposed is reasonable. *Walden*, 319 Mich App at 351. The trial court must, however, "justify the departure on the record by explaining why the sentence imposed is more proportionate to the offense and the offender than a different sentence would have been." *People v Odom*, 327 Mich App 297, 315; 933 NW2d 719 (2019) (quotation marks and citation omitted). If the trial court fails to adequately explain its departure, we "must remand to the trial court for resentencing." *Steanhouse*, 500 Mich at 476.

In this case, the sentencing guidelines minimum range was 3 to 5 years. Without providing any explanation, the trial court imposed an upward departure sentence of 6 to 20 years. Because

the trial court articulated no explanation for the departure, we are unable to review the sentence for reasonableness or to assess whether the extent of the departure was proportionate. See *People v Smith*, 482 Mich 292, 303-304; 754 NW2d 284 (2008). The failure to justify an upward departure constitutes an abuse of discretion, and we therefore vacate defendant's sentence and remand for resentencing. See *Steanhouse*, 500 Mich at 476.[4]

III. CONCLUSION

We affirm defendant's conviction but vacate his sentence and remand for resentencing. We do not retain jurisdiction.

/s/ Mariam S. Bazzi
/s/ Sima G. Patel
/s/ Matthew S. Ackerman

[4] In an untimely brief, the prosecution conceded that "defendant is correct: the court's failure to articulate its reasoning prevents meaningful appellate review of the sentence it selected," and resentencing is therefore required.