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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STACE RYAN SMITH,

Defendant-Appellant.

UNPUBLISHED
September 28, 2026
10:29 AM

No. 370161
Charlevoix Circuit Court
LC No. 2023-047814-FC

Before: MARIANI, P.J., and FEENEY and TREBILCOCK, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for (1) two counts of first-degree criminal sexual conduct (CSC-I), MCL 750.520b(1)(a); MCL 750.520b(2)(b) (sexual penetration; victim under 13 years old, defendant over 17 years old); and (2) one count of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(a); MCL 750.520c(2)(b) (sexual contact; victim under 13 years old, defendant over 17 years old). The trial court sentenced defendant to serve concurrent sentences of (1) 25 to 40 years, and (2) 8 to 15 years in prison, for each conviction respectively, along with lifetime registration as a Tier III sex offender under the Sex Offenders Registration Act (SORA), MCL 28.721 *et seq*., and lifetime electronic monitoring, MCL 750.520n(1). We affirm.

I. FACTS

Defendant dated, and then married, the victim's mother. He was part of the victim's household when the victim was 3 to 15 years old. The victim testified that defendant eventually began "molesting" her, elaborating as follows:

> He would touch me with his hands. He would have me undress for him. He would have me touch him or use my mouth. He also engaged in penetrative sex with me, which began before I had started my period. This went on for a really long time. It changed as I got older. After I started my period the penetration stopped and it was just having me touch him, or he wanted to touch me.

In March 2016, the victim called 911 to report that defendant was physically assaulting her mother. Defendant was convicted of domestic assault, and the victim and her mother moved away from him.

In October 2021, defendant moved to Arizona, and in November 2021, the victim reported the alleged sexual abuse to police. In April 2023, a detective with the Charlevoix County Sheriff asked the local Arizona police to speak with defendant. Two Arizona detectives interviewed defendant outside his trailer, recording the interview with a body camera. Among the statements captured was defendant's assertion that the victim's mother "had [the victim] call 911 and she lied about what was happening."

Defendant was charged with two counts of CSC-I, one count of CSC-II, and one count of assault by strangulation or suffocation.[1] A two-day jury trial was held. The victim, then 23 years old, testified at trial, as did her mother, Sara Hawkins; her best friend, Autumn Rosselit; her former boyfriend, Tyler Nichols; defendant's ex-fiancée, Jennifer Moses; defendant's sister, Sarah Oldham; and the investigating police detective. During trial, and outside the presence of the jury, the trial court inquired whether there was a statute of limitations issue for the strangulation charge. After researching the matter, the prosecuting attorney asked the court to dismiss the strangulation charge for that reason, and the court did so. By this time, however, the jury had already heard the victim's account that defendant strangled her. The jury found defendant guilty of the remaining charges, and the trial court sentenced defendant, as stated earlier.

Following sentencing, defendant moved for a new trial or an evidentiary hearing to develop his claim of ineffective assistance of trial counsel, or, alternatively, for correction of his sentence. After holding a hearing on the motion, the trial court issued an opinion denying it in all its facets. This appeal followed.

II. INEFFECTIVE ASSISTANCE OF COUNSEL

On appeal, defendant argues that defense counsel provided ineffective assistance in a variety of ways. We will address, and dismiss, each argument in turn.

A. PRESERVATION AND STANDARD OF REVIEW

Defendant preserved these claims by raising them in a motion for a new trial or evidentiary hearing filed in the trial court as well as in a motion to remand filed in this Court. See *People v Abcumby-Blair*, 335 Mich App 210, 227; 966 NW2d 437 (2020); *People v Sabin (On Second Remand)*, 242 Mich App 656, 658; 620 NW2d 19 (2000). "Whether a person has been denied effective assistance of counsel is a mixed question of fact and constitutional law. A judge first must find the facts, and then must decide whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel." *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002). "This Court reviews findings of fact for clear error and questions of law de novo." *People v Heft*, 299 Mich App 69, 80; 829 NW2d 266 (2012). But when, as in

[1] The victim testified that defendant strangled and threatened to kill her during one attempted sexual assault because she yelled "at him that he was raping [her] . . . ."

this case, the trial court did not conduct an evidentiary hearing, review of a claim of ineffective assistance is limited to mistakes apparent on the existing record. *People v Fyda*, 288 Mich App 446, 450; 793 NW2d 712 (2010).[2]

B. LEGAL STANDARDS

The United States Constitution guarantees a criminal defendant "the Assistance of Counsel for his defence." US Const, Am VI. The Michigan Constitution likewise provides criminal defendants the right to "the assistance of counsel for his or her defense[.]" Const 1963, art 1, § 20.

> A criminal defendant has the fundamental right to effective assistance of counsel. However, it is the defendant's burden to prove that counsel did not provide effective assistance. To prove that defense counsel was not effective, the defendant must show that (1) defense counsel's performance was so deficient that it fell below an objective standard of reasonableness and (2) there is a reasonable probability that defense counsel's deficient performance prejudiced the defendant. The defendant was prejudiced if, but for defense counsel's errors, the result of the proceeding would have been different. [*Heft*, 299 Mich App at 80-81 (citations omitted).]
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> * * *
>
> We give defense counsel wide discretion in matters of trial strategy because counsel may be required to take calculated risks to win a case. To show that defense counsel's performance was objectively unreasonable, the defendant must overcome the strong presumption that defense counsel's decisions constituted sound trial strategy. This Court will not substitute its judgment for that of defense counsel or review decisions with the benefit of hindsight. [*Id*. at 83 (citations omitted).]

"Failing to advance a meritless argument or raise a futile objection does not constitute ineffective assistance of counsel." *People v Ericksen*, 288 Mich App 192, 201; 793 NW2d 120 (2010), lv den 488 Mich 1045 (2011).

1. THE VICTIM'S TESTIMONY

[2] As noted, however, defendant did move for an evidentiary hearing both below and before this Court. And this Court's denial of defendant's motion was "without prejudice to a case call panel of this Court determining that remand is necessary[.]" *People v Smith*, unpublished order of the Court of Appeals, entered March 19, 2026 (Docket No. 370161). Accordingly, while our review of defendant's claims of ineffective assistance is for errors apparent on the record now before us, we are not foreclosed from determining, based upon that record, that a remand for further development of those claims is necessary. Upon plenary review of defendant's claims, however, we continue to see no need for a remand to properly adjudicate the claims.

Defendant first challenges defense counsel's performance in connection with the victim's testimony that defendant: (1) strangled the victim, (2) slapped the victim, and (3) subjected the victim's mother to domestic violence. MRE 404(b)(1) generally provides that "[e]vidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character." Under MRE 404(b)(2), however, such "evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, absence of mistake, or lack of accident."

Notably, the Legislature enacted an exception to the general prohibition of propensity evidence with MCL 768.27b(1), which states that

> in a criminal action in which the defendant is accused of an offense involving domestic violence or sexual assault, evidence of the defendant's commission of other acts of domestic violence or sexual assault is admissible for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403. [MCL 768.27b(1), as amended by 2018 PA 372.[3]]

Under MRE 403, "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." The following considerations may lead a court to exclude such evidence under MRE 403:

> (1) the dissimilarity between the other acts and the charged crime, (2) the temporal proximity of the other acts to the charged crime, (3) the infrequency of the other acts, (4) the presence of intervening acts, (5) the lack of reliability of the evidence supporting the occurrence of the other acts, and (6) the lack of need for evidence beyond the complainant's and the defendant's testimony. This list of considerations is meant to be illustrative rather than exhaustive. [*People v Berklund*, ___ Mich App ___, ___; ___ NW3d ___ (2024) (Docket No. 367568); slip op at 10 (quotation marks and citation omitted).]

"[W]hen applying MRE 403 to evidence admissible under MCL 768.27b, courts should weigh the propensity inference in favor of the evidence's probative value rather than its prejudicial effect." *Id.* at ___; slip op at 10.

According to defendant, the victim's testimony that he strangled her, slapped her, and subjected her mother to domestic violence was all inadmissible under MRE 403, and defense counsel performed ineffectively by failing to secure its exclusion on that basis. Applying MRE 403 to each challenged piece of testimony, however, we do not find grounds to conclude that counsel performed ineffectively.

[3] MCL 768.27b(1) has since been amended, but the only change was the addition of crimes related to prostitution to the other acts that could be considered. See 2024 PA 184.

a. STRANGULATION TESTIMONY

As an initial matter, defendant correctly asserts that defense counsel performed deficiently by failing to notice the statute-of-limitations issue regarding his strangulation charge. Nevertheless, defendant fails to establish that any prejudice resulted. As noted, the trial court noticed the issue, and, at the prosecution's request, dismissed the charge. Defendant argues that he suffered prejudice even so, because, had the strangulation charge been dismissed before trial, no evidence related to the strangulation allegation would have then been admissible at trial because it would have been barred by MRE 403. We disagree.

The victim testified that when she was 10 years old—after the sexual abuse had been occurring for some time—defendant came into her room and tried to wake her up "to molest [her]." She pretended to be asleep, but when that "didn't work," defendant started "spreading" her legs. She "yelled at him that he was raping [her], and he then put his hands around [her] throat and strangled [her] and told [her] that he was going to kill [her]," causing her to fear for her life. Further, according to the victim, "after he strangled [her,] the blood vessels had popped in [her] face around [her] eyes . . . ."

Starting with this evidence's "probative value," MRE 403, we conclude that the alleged strangulation was relevant to the jury's evaluation of whether the victim was telling the truth about the alleged sexual misconduct. This incident was particularly significant because defendant's reaction to the victim's attempt to offer resistance illustrated why she feared resisting or reporting on other occasions.

Citing MRE 403, defendant argues that the strangulation evidence should have been excluded because of "unfair prejudice" or as "needlessly presenting cumulative evidence." We hold that those dangers did not substantially outweigh the probative value. That the strangulation was a unique occurrence suggests that it was not cumulative at all, but rather a description of a singular event that best explained the victim's fears. And its close relation to defendant's course of sexually assaultive conduct suggests that any prejudice resulting from it was not unfair. See *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995) ("All evidence offered by the parties is 'prejudicial' to some extent, but the fear of prejudice does not generally render the evidence inadmissible. It is only when the probative value is *substantially outweighed* by the danger of unfair prejudice that evidence is excluded.").

b. SLAP TESTIMONY

The victim also testified that one day, she told defendant that she did not "want to drive with [defendant], and he just immediately backhanded [her] across the face and it split [her] lip open." He then "dragged [her] by [her] ear back up the stairs and into the house, and then threw [her] into [her] bedroom and told [her] to . . . [g]et the F out." According to the victim, she began to pack her things and called her father to pick her up, but defendant "apologized to [her] and told [her that she did not] have to leave," upon which she called her father and told him not to come. She added that she did not believe that defendant was actually remorseful, but she agreed to stay because she was worried about a possible altercation between defendant and her father.

While not as closely related to an attempted sexual assault, evidence of defendant's resort to brutality, and of the victim's learning the dire consequences of resisting him, shed light on the relationship between defendant and the victim as well as the system of power and fear that defendant maintained in order to continue his assaults. Again, the concerns outlined in MRE 403 did not substantially outweigh the probative value of the challenged evidence. Because the hit on the face was described as a unique occurrence, it was not cumulative, but rather a description of a singular event that explained the victim's fears in a different way from the other evidence. And because it was relevant to defendant's relationship with the victim, any resulting prejudice was not "unfair." Defendant was on trial for CSC-I and CSC-II, and the victim had described many instances of very disturbing sexual aggression. The hit on the face was far from the worst of defendant's alleged actions and therefore raised little concern that the jury might focus on punishing defendant for it instead of properly considering the charged crimes.

c. DOMESTIC VIOLENCE TESTIMONY INVOLVING HER MOTHER

The victim also testified about hearing her mother and defendant fighting one day. According to the victim, defendant "was screaming at her [mother], and [she] heard her [mother] get pushed up against the closet" and tell defendant that "he was hurting her and asking him to stop." The victim testified that the victim "was scared," and that while she had "suspected" defendant had been hurting her mother, she "had never heard" it before, and so called 911. She stated that she then lied to the police, telling them that defendant had never "hurt" herself or her mother before. She explained that "even with the police right there [she] was terrified of him." She further testified that the police took defendant "to jail overnight," and then she and her mother moved out.

Although this incident involved violence directed toward the victim's mother, and not the victim, the evidence of defendant's use of violence in the home, and of the victim's learning the consequences of resisting him, illustrated that the fears that kept the victim quiet about the sexual assaults for so long included concern that defendant would hurt her mother in retaliation. Further, a closed door being between herself and defendant on this occasion, as opposed to all of the incidents where she was the victim, explained why she felt emboldened to call 911 on this occasion. Moreover, this was the event that put an end to her and her mother's living with defendant. The fact that domestic violence created the opportunity for the victim and her mother to separate themselves from defendant, as opposed to an amicable parting of ways, was relevant evidence for the jury to consider. Additionally, the victim's account countered defendant's claim in his Arizona interview that the victim's mother encouraged the victim to "call 911 and she lied about what was happening."

We again conclude that the MRE 403 dangers did not substantially outweigh the probative value described above because the evidence presented unique aspects and therefore was not cumulative, and it fairly explained the victim's fears and why the victim and her mother stopped living with defendant. The violence's relevance and probative value toward illustrating defendant's relationship with the victim and her mother indicates that any prejudice from hearing about it was not "unfair." And, again, because the described violence toward the victim's mother was far from the worst of defendant's actions described at trial, there was little likelihood that the jury would simply focus on punishing defendant for that evidence.

d. CONCLUSION REGARDING VICTIM'S TESTIMONY

Defendant's argument that the jury was overpersuaded by these three acts of domestic violence or confused about what it was deciding is unpersuasive. We note that the victim was the first witness called and that she described the sexual assaults before describing any of these three other incidents. We further note that, with its final jury instructions, the trial court clearly described the three criminal charges actually at issue and twice admonished, "You must not convict the Defendant in this case solely because you think he is guilty of other bad conduct. The evidence must convince you beyond a reasonable doubt that the Defendant committed the offenses for which he is now on trial or you must find him not guilty." "Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors." *People v Abraham*, 256 Mich App 265, 279; 662 NW2d 836 (2003). "[A] limiting instruction prohibiting the jury from drawing an improper inference" should therefore eliminate "any possible unfair prejudice." *People v Houston*, 261 Mich App 463, 469-470; 683 NW2d 192 (2004), aff'd 473 Mich 399 (2005). Accordingly, the record does not support defendant's argument that those other incidents persuaded the jury to find him guilty of CSC-I and CSC-II.

For all the reasons set forth above, objections to the victim's testimony—regarding the times that defendant strangled her, slapped her, and engaged in domestic violence against her mother—on the basis of MRE 403 would have been properly overruled, and defense counsel was not ineffective for failing to advance a meritless argument or raise a futile objection. See *Ericksen*, 288 Mich App at 201.

2. VOUCHING

Defendant further argues that defense counsel provided ineffective assistance by failing to object to Rosselit's testimony, which improperly vouched for the victim's credibility. We disagree.

"It is generally improper for a witness to comment or provide an opinion on the credibility of another witness, because credibility matters are to be determined by the jury." *People v Dobek*, 274 Mich App 58, 71; 732 NW2d 546 (2007). "Criminal cases are usually fought on the battlefield of witness credibility, and this is particularly true in situations involving the credibility of a victim of a CSC crime where the only witnesses present are the victim and the perpetrator . . . ." *People v Lemmon*, 456 Mich 625, 642 n 22; 576 NW2d 129 (1998) (citation omitted). But there are certainly "times when it is better not to object and draw attention to an improper comment." *People v Bahoda*, 448 Mich 261, 287 n 54; 531 NW2d 659 (1995).

In this case, Rosselit testified that she and the victim were close friends since fourth grade, that she knew that the victim's "home life was not good," that the victim was afraid of defendant, and that she "knew [the victim] was sexually active for most of our middle school friendship, but it was always just referred to as an older guy." Rosselit recounted that "the only explanation I could come to was that [the sexual activity] was happening at home." She elaborated as follows:

> I feel like it was something I always knew in the back of my head. When she told me freshmen year, like, confirmed for me that it was [defendant], it did not feel like that big of a . . . revelation. It felt like something I already knew, and so it

> was very easy for me to just take in stride. I believed her instantly. There was not much for me to question.

Rosselit's testimony provided her own observations and thought processes; she did not simply assert that the victim was trustworthy and should be believed. In a discussion between the parties and court outside the presence of the jury, defense counsel explained that he did not object to Rosselit's testimony—that she believed the victim—because Rosselit also testified that "they'd been best buddies since they were [in] fourth grade or something." Considering that Rosselit was the victim's close friend, and that Rosselit was testifying on behalf of the prosecution, it was not unusual or unpredictable that she believed the victim's allegations. In fact, that is something that the jury likely expected and noticed before it was ever directly vocalized. Defense counsel's decision to not raise an attendant objection served the strategic purpose of not drawing additional attention to, and therefore compounding, any implication that Rosselit was vouching for the victim. See *Bahoda*, 448 Mich at 287 n 54; *Heft*, 299 Mich App at 83. Moreover, the trial court properly instructed the jury regarding its responsibility to determine credibility and consider bias when doing so. "Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors." *Abraham*, 256 Mich App at 279. "[A] limiting instruction prohibiting the jury from drawing an improper inference" should therefore eliminate "any possible unfair prejudice." *Houston*, 261 Mich App at 469-470.

3. HEARSAY

Defendant further argues that defense counsel provided ineffective assistance by failing to object to Rosselit's and Nichols's[4] hearsay testimony. We disagree.

Hearsay is a statement that "the declarant does not make while testifying at the current trial or hearing" and that "a party offers in evidence to prove the truth of the matter asserted in the statement." MRE 801(c). Hearsay is generally inadmissible unless an exception exists. MRE 802. But a declarant-witness's prior statement is not hearsay if it "is consistent with the declarant's testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying[.]" MRE 801(d)(1)(B). To introduce a prior consistent statement through a third party, four elements must be satisfied:

> (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, 707; 613 NW2d 411 (2000) (quotation marks and citation omitted).]

In this case, Rosselit testified in detail about what the victim told her about the abuse, including that the victim started disclosing the incidents to her when she was "10 or 11" and that

[4] Tyler Nichols was the victim's former boyfriend.

the victim revealed more details in the years that followed. Nichols testified that in 2016, the victim told him that "she was essentially sexually abused and physically abused, and then she opened up a little later about that it was her former stepfather." He further testified that the victim told him that defendant "would basically make her perform sexual acts on him" before allowing her to go out with friends.

Defendant argues that Rosselit's and Nichols's testimonies failed to satisfy elements (2) and (4) as set forth in *Jones*. See *id*.

Element (2) concerns whether there was "an express or implied charge of recent fabrication or improper influence or motive of the declarant's testimony[.]" *Id*. (quotation marks and citation omitted). During defendant's Arizona interview, defendant stated that his ex-wife "had [the victim] call 911 and she lied about what was happening," and, when asked about the victim's allegations, defendant stated, "That didn't happen," and, "No, that's not true. Never anything like that ever happened." Therefore, there was clearly an express charge of recent fabrication regarding the victim's allegations. See *id*.

Element (4) concerns whether the prior consistent statement was "made prior to the time that the supposed motive to falsify arose." *Id*. (quotation marks and citation omitted). Defendant asserts that the motive to falsify arose in March 2016, when the victim called 911 to report defendant's acts of domestic violence against her mother. But even if so, that would have still, at a minimum, allowed for the admission of everything the victim told Rosselit beginning in the fifth grade and continuing up until that March 2016 call to 911. Those disclosures occurred during the years that the victim lived with defendant and the alleged sexual abuse was occurring. During that time, the victim told Rosselit that: (1) defendant "was violent towards her mom," (2) she feared defendant, and (3) she was engaging in sexual activities with "an older guy" often enough that Rosselit believed those activities could only have been with someone that was "already in her life." Defendant has not shown how it is reasonably probable that, had only this portion of the challenged testimony been admitted, the outcome of his trial would have been different. Accordingly, even if there were a colorable basis to object to some of the challenged testimony, we do not see grounds to conclude that the absence of such objection amounted to constitutionally ineffective assistance of counsel.

4. OTHER ACTS OF DOMESTIC VIOLENCE

Defendant further argues that he was provided ineffective assistance when defense counsel failed to object to testimony from the victim's mother, Hawkins, and defendant's former fiancée, Moses, regarding other acts of domestic violence. According to defendant, this testimony was inadmissible under MRE 403. We disagree.

As previously stated, the Legislature enacted an exception to the general prohibition of propensity evidence with MCL 768.27b(1), which states that

> in a criminal action in which the defendant is accused of an offense involving domestic violence or sexual assault, evidence of the defendant's commission of other acts of domestic violence or sexual assault is admissible for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403. [MCL 768.27b(1), as amended by 2018 PA 372.]

Under MRE 403, "The court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." The following considerations may lead a court to exclude such evidence under MRE 403:

> (1) the dissimilarity between the other acts and the charged crime, (2) the temporal proximity of the other acts to the charged crime, (3) the infrequency of the other acts, (4) the presence of intervening acts, (5) the lack of reliability of the evidence supporting the occurrence of the other acts, and (6) the lack of need for evidence beyond the complainant's and the defendant's testimony. This list of considerations is meant to be illustrative rather than exhaustive. [*Berklund*, ___ Mich App at ___; slip op at 10 (quotation marks and citation omitted).]

Here again, "when applying MRE 403 to evidence admissible under MCL 768.27b, courts should weigh the propensity inference in favor of the evidence's probative value rather than its prejudicial effect." *Id.* at ___; slip op at 10.

a. HAWKINS'S TESTIMONY

In this case, Hawkins testified that she left defendant in March 2016, because she "was being abused" by him. According to Hawkins, defendant "started off with mental abuse and over the years it progressed to sexual and physical abuse." She explained that she decided to move out after defendant "shov[ed] [her] into a wall, kind of throwing [her] around, and [the victim] locked herself in her bedroom and called 911."

The probative value of Hawkins's brief testimony regarding other acts of domestic violence was not outweighed by unfair prejudice. Hawkins's testimony concerned events that were close in time to defendant's alleged sexual abuse of the victim; although Hawkins's testimony concerned defendant's actions against an adult, the domestic violence between Hawkins and defendant occurred in the victim's presence and resulted in the victim calling 911. Moreover, during defendant's Arizona interview, he denied sexually assaulting the victim, and he asserted that the victim was falsely accusing him at her mother's behest—specifically, that Hawkins forced the victim to call 911 and lie to the police. Therefore, the need for evidence beyond the victim's testimony was warranted.

Defense counsel was not ineffective for failing to object to testimony that was admissible under MCL 768.27b(1) and MRE 403. See *Ericksen*, 288 Mich App at 201.

b. MOSES'S TESTIMONY

Moses also testified that although she had been engaged to defendant, their relationship ended in 2018 "[w]hen he lost it one day" and she "[w]oke up in the morning to [her] four year old screaming . . . running up the stairs." Moses did not provide further details regarding the incident aside from the fact that she called 911 "related to a domestic dispute."

The probative value of Moses's testimony regarding another act of domestic violence was not outweighed by unfair prejudice. Moses's testimony was extremely brief and lacked detail—it was provided to specifically rebut defendant's assertion of falsification, not provide more details

to enrage the jury. Considering that defendant's theory was that the victim's family was heavily biased against defendant, and that the victim was falsely accusing him, evidence of a domestic-violence situation with a different family was useful for the jury's determination whether to believe the victim.

Defense counsel was not ineffective for failing to object to testimony that was admissible under MCL 768.27b(1) and MRE 403. See *id*.

5. OTHER ACTS OF SEXUAL ABUSE

Defendant further argues that he was provided ineffective assistance when defense counsel failed to object to testimony from defendant's sister, Oldham, regarding other acts of sexual abuse. We disagree.

Another exception to MRE 404(b)(1)'s general prohibition of propensity evidence is MCL 768.27a, which states that "in a criminal case in which the defendant is accused of committing a listed offense against a minor, evidence that the defendant committed another listed offense against a minor is admissible and may be considered for its bearing on any matter to which it is relevant." The Michigan Supreme Court has held that "MRE 403 applies to evidence admissible under MCL 768.27a," and "when applying MRE 403 to evidence admissible under MCL 768.27a, courts must weigh the propensity inference in favor of the evidence's probative value rather than its prejudicial effect." *People v Watkins*, 491 Mich 450, 486-487; 818 NW2d 296 (2012). Again, the following considerations may lead a court to exclude such evidence under MRE 403:

> (1) the dissimilarity between the other acts and the charged crime, (2) the temporal proximity of the other acts to the charged crime, (3) the infrequency of the other acts, (4) the presence of intervening acts, (5) the lack of reliability of the evidence supporting the occurrence of the other acts, and (6) the lack of need for evidence beyond the complainant's and the defendant's testimony. This list of considerations is meant to be illustrative rather than exhaustive. [*Id*. at 487-488 (citation omitted).]

In this case, defendant's sister, Oldham, testified that, starting when she was 9 years old and defendant 15 years old, defendant would force her to watch pornography, lick her vagina, and penetrate her vagina with his penis. She further testified that the assaults continued for "a really long time," and that "there were many incidences where [she] would be left with him and didn't want to be, and would cry and scream, and would still have to stay with him, and it would continue."[5]

The probative value of Oldham's testimony regarding another act of sexual abuse was not outweighed by unfair prejudice. Although Oldham's testimony concerned acts that occurred about

[5] As an initial matter, defendant challenges the reliability of Oldham's testimony on the grounds that no corroborating records from Oldham's physician or counselor were presented. But the prosecution's notice of intent to present this evidence included the name of Oldham's pediatrician as well as the name of the hospital that she had testing done.

20 years prior to the alleged actions in this case, both circumstances involved defendant repeatedly victimizing a young girl with whom he lived, despite their clear rejections at his advances. The defense theory in this case focused on impugning the victim's credibility while suggesting that the other witnesses who were closely connected to her merely repeated what the victim told them. In this respect, Oldham's account was unique, coming from a person who had a closer familial relationship to defendant than to the victim. As the only other witness accusing defendant of sexually assaulting her when she was a child, Oldham's testimony offered something of independent value for the jury to consider, as opposed to cumulative evidence.

Evidence that defendant previously committed sexual assault was relevant to proving that defendant committed the offenses at issue in this case because, as explained, the evidence supported the victim's credibility, presented circumstances similar to those underlying the charged offense, and provided the jury with a more complete picture of defendant's history. See e.g., *Berklund*, ___ Mich App at ___; slip op at 10-11. "And to any extent that a danger of unfair prejudice may persist, the trial court can minimize that danger by instructing the jury on the proper use of the other-acts evidence," *id*., which the trial court properly did in this case.

Accordingly, defense counsel was not ineffective for failing to object to testimony that was admissible under MCL 768.27a(1) and MRE 403. See *Ericksen*, 288 Mich App at 201.

6. CONFRONTATION CLAUSE

Defendant further argues that he was provided with ineffective assistance because defense counsel failed to object to the presentation of his Arizona interview video as a violation of his confrontational rights. We disagree.

"In all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him[.]" US Const, Am VI. "The confrontation right is incorporated to apply to states through the Due Process Clause of the Fourteenth Amendment." *People v Bruner*, 501 Mich 220, 227; 912 NW2d 514 (2018); see Const 1963, art 1, § 20. "The right is implicated only for 'testimonial' evidence, because the Confrontation Clause applies to 'witnesses' against the accused—in other words, those who 'bear testimony.' The threshold question for any Confrontation Clause challenge, therefore, is whether the proffered evidence is testimonial." *Bruner*, 501 Mich at 227 (citation omitted). "Testimony is a solemn declaration or affirmation made for the purpose of establishing or proving some fact." *Id*. (quotation marks and citation omitted). "Testimonial statements of witnesses absent from trial may be admitted only where the declarant is unavailable, and only where the defendant has had a prior opportunity to cross-examine." *Id*. (quotation marks and citation omitted).

"[T]he Confrontation Clause applies only to statements used as substantive evidence." *People v Fackelman*, 489 Mich 515, 528; 802 NW2d 552 (2011). Accordingly, "courts must consider the circumstances under which the evidence in question came about to determine whether it is testimonial." *People v Nunley*, 491 Mich 686, 706; 821 NW2d 642 (2012). Testimonial evidence is "*made under circumstances* that would lead an objective witness reasonably to believe that it would be available for use at a later trial." *Id*. at 709.

Defendant argues that the video recording of his Arizona interview was not properly presented because neither of the two participating Arizona detectives testified; instead, a Michigan detective offered testimony relating to the video.[6]

Defendant correctly asserts that the video included testimonial evidence subject to confrontational rights; however, the only testimonial statements were by defendant, not the Arizona officers.[7] The United States Supreme Court has stated that, "even when interrogation exists, it is in the final analysis the declarant's statements, not the interrogator's questions, that the Confrontation Clause requires us to evaluate." *Davis v Washington*, 547 US 813, 822 n 1; 126 S Ct 2266; 165 L Ed 2d 224 (2006). Further, defendant does not identify any statements made by the Arizona detectives that were then used as testimonial evidence at trial, or about which he could have conducted valuable cross-examination had they appeared as live witnesses. Moreover, defendant's statements during his Arizona interview were consistent with his defense theory at trial—that the victim and her mother were falsely accusing him out of personal animus.

For these reasons, any objection to the video under Confrontation Clause grounds would have been meritless, and defense counsel's decision to stipulate to admission of the video and provide argument based upon its content was reasonable. See *Ericksen*, 288 Mich App at 201.

7. CUMULATIVE ERROR

Defendant further argues that the cumulative effect of the above claims of error deprived him of a fair trial. We disagree.

"The cumulative effect of several minor errors may warrant reversal where the individual errors would not." *People v Ackerman*, 257 Mich App 434, 454; 669 NW2d 818 (2003). As discussed, defense counsel's failure to notice, and act upon, the statute-of-limitations issue concerning the strangulation charge constituted deficient performance. But, as discussed, the trial court noticed the problem, the charge was dismissed, and the matter left defendant at no disadvantage. And to the extent counsel was deficient for failing to object to Rosselit's and

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[6] Defendant presents this argument as a Confrontation Clause issue, but he also offers argument relating to authentication formalities. "To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what its proponent claims it is." MRE 901(a). Our Legislature has provided "examples . . . of evidence that satisfies the requirement," including, "[t]estimony that an item is what it is claimed to be." MRE 901(b)(1). In this case, the Michigan detective testified about how his investigation led to the creation of the video and how he obtained it from Arizona. He further testified that he recognized defendant and an Arizona police detective from the video. Defendant does not assert that the video is actually inauthentic. To the extent that defendant implies that one of the Arizona detectives needed to travel to Michigan to authenticate the video, the argument is inapt.

[7] As for defendant's testimonial statements, defendant was available to testify at trial had he wished to provide any explanation, clarification, or contradiction of what he was shown saying in the video—he simply decided not to exercise that right.

Nichols's testimony, we do not see any meaningful prejudice from that failure given the scope of testimony that would have been admitted regardless. Because we do not see reversible error in the combined effect of these errors, and have entirely rejected defendant's other claims of ineffective assistance, his assertion of cumulative error is unavailing.

III. CRUEL OR UNUSUAL PUNISHMENT

Defendant further challenges the constitutionality of lifetime SORA registration and electronic monitoring.

A. PRESERVATION AND STANDARD OF REVIEW

Because defendant raised these claims in the trial court, they are preserved for appellate review. See *People v Burkett*, 337 Mich App 631, 635; 976 NW2d 864 (2021). Questions of constitutional law are reviewed de novo. *LeBlanc*, 465 Mich at 579. "Statutes are presumed to be constitutional, and the party challenging a statute has the burden of showing the contrary." *People v Burkman*, 513 Mich 300, 326; 15 NW3d 216 (2024). "A facial challenge involves a claim that there is no set of circumstances under which the enactment is constitutionally valid, while an as-applied challenge considers the specific application of a facially valid law to individual facts." *People v Jarrell*, 344 Mich App 464, 482; 1 NW3d 359 (2022) (quotation marks and citations omitted).

B. LIFETIME SORA REGISTRATION

Defendant first argues that SORA's lifetime registration requirement constitutes cruel or unusual punishment, both facially and as-applied. We disagree.

"The Michigan Constitution prohibits cruel *or* unusual punishment, Const 1963, art 1, § 16, whereas the United States Constitution prohibits cruel *and* unusual punishment, US Const, Am VIII. If a punishment passes muster under the state constitution, then it necessarily passes muster under the federal constitution." *People v Benton*, 294 Mich App 191, 204; 817 NW2d 599 (2011) (quotation marks and citation omitted). "[T]he issue under Const 1963, art 1, § 16 . . . concerns whether the punishment concededly chosen or authorized by the Legislature is so grossly disproportionate as to be unconstitutionally 'cruel or unusual.' " *People v Bullock*, 440 Mich 15, 34 n 17; 485 NW2d 866 (1992). Michigan courts consider a four-factor balancing test when evaluating whether a punishment is unconstitutionally cruel or unusual: "(1) the severity of the sentence relative to the gravity of the offense; (2) sentences imposed in the same jurisdiction for other offenses; (3) sentences imposed in other jurisdictions for the same offense; and (4) the goal of rehabilitation . . . ." *People v Parks*, 510 Mich 225, 242; 987 NW2d 161 (2022).

Defendant's convictions of CSC-I render him a Tier III offender under SORA. MCL 28.722(v)(*iv*). Tier III offenders' "reporting requirements are independent of any offender's individual risk of reoffending." *People v Kardasz*, ___ Mich ___, ___; ___ NW3d ___ (2025) (Docket No. 165008); slip op at 35.

> Tier III offenders are subject to lifetime registration requirements and must report in person four times per year. They cannot petition for removal based on age, infirmity, low risk of recidivism, or sustained offense-free conduct. . . .

> In addition to periodic in-person reporting requirements, all registrants must report any changes to their registry information. Changes in residency, employment, educational enrollment, and name must be reported in person within three business days. Changes in vehicle information, email address, internet identifiers, phone numbers, and travel plans of seven days or longer must also be reported within three days, although the 2021 SORA provided that those reports can be made either in person or by mail. [*Id.* at ___; slip op at 13-14 (citations omitted).]

In *Kardasz*, ___ Mich at ___; slip op at 42, the Supreme Court clarified "that the 2021 SORA is punishment but not cruel or unusual in every instance . . . ." The Court focused its "analysis on Tier III offenders" as those who "committed the most severe registrable offenses and are subject to the most onerous requirements under the 2021 SORA." *Id*. at ___; slip op at 34. The Court concluded "that the 2021 SORA is not grossly disproportionate in all instances," and therefore not cruel or unusual on its face. *Id*.

The Court also rejected the defendant's as-applied challenge. *Id*. The Court held that SORA does not support the goal of rehabilitation, *id*. at ___; slip op at 41, but that the other pertinent considerations did not weigh against proportionality for purposes of the constitutional analysis, explaining as follows:

> On balance, the 2021 SORA is not cruel or unusual punishment either in all instances or as applied to [the defendant]. Tier III offenders have committed serious sex offenses. Their punishment is unique to sex offenses, but it is in alignment with a plurality of states that utilize sex-offender-registration schemes in accordance with the federal SORNA requirements. Moreover, [the defendant] committed the most elevated registrable offense and has not provided evidence to support a claim that lengthy registration requirements are not appropriate relative to his individualized level of risk of reoffending. [*Id*. at ___; slip op at 41-42.]

Kardasz does not necessarily establish that any Tier III offender's as-applied challenge to SORA as cruel or unusual must fail. But the instant as-applied challenge is hardly distinguishable from that rejected in *Kardasz*. The defendant in *Kardasz* was convicted of one count of CSC-I "for the sexual assault of his five-year-old daughter." *Id*. at ___; slip op at 2. In this case, defendant was convicted of two counts of CSC-I, and one count of CSC-II, for the sexual assault of his stepdaughter, who described numerous sexual assaults that were occurring by the time she was "in early middle school or elementary school." Nor has defendant identified any other grounds upon which to conclude that his as-applied challenge could or should prevail despite the analysis set forth in *Kardasz*.

For these reasons, we reject defendant's claim that lifetime SORA registration constitutes constitutionally cruel or unusual punishment.

C. LIFETIME ELECTRONIC MONITORING

Defendant also argues that lifetime electronic monitoring is constitutionally cruel or unusual. We disagree.

MCL 750.520b(2)(d) requires the trial court to "sentence the defendant to lifetime electronic monitoring" for a conviction of CSC-I. MCL 750.520c(2)(b) similarly mandates lifetime electronic monitoring for persons convicted of CSC-II when the offense "involved sexual contact committed by an individual 17 years of age or older against an individual less than 13 years of age."

In *People v Hallak*, 310 Mich App 555, 567; 873 NW2d 811 (2015), rev'd in part on other grounds 499 Mich 879 (2016), the defendant challenged lifetime electronic monitoring both facially, and as-applied, as cruel or unusual. The defendant was a doctor convicted of CSC-II, whose victim testified that when she was 12 years old, the defendant held her "breast for between 1 and 30 seconds with his left hand on the outside of her shirt" during her medical examination. *Id*. at 560. The jury also "heard testimony from several witnesses who also claimed to have experienced similar treatment from [the defendant] while under his care." *Id*. at 562.

This court held that lifetime electronic monitoring was punishment, but not cruel or unusual punishment, either facially or as applied. *Id*. at 571, 577. This court stated that "sexual abuse of children under the age of 13 is a grave offense in all instances." *Id*. at 575 n 8. This Court further noted that "[m]any states have imposed the penalty of lifetime electronic monitoring for various CSC cases," and that "at least 11 (including Michigan) have mandated lifetime monitoring for defendants convicted of the most serious CSC offenses or CSC with a minor." *Id*. at 575.

Hallak is binding precedent, and defendant offers no convincing way to distinguish this case from it. In fact, this case involved conduct of greater violence, intensity, and frequency perpetrated against a younger victim over whom defendant was in a greater position of authority and trust. We therefore reject defendant's claim that lifetime electronic monitoring constitutes unconstitutionally cruel or unusual punishment. See *id*. at 571, 577.

IV. UNREASONABLE SEARCH

Defendant further argues that lifetime electronic monitoring is a constitutionally unreasonable search. We disagree.

A. PRESERVATION AND STANDARD OF REVIEW

Because defendant raised this claim in the trial court, it is preserved for appellate review. See *Burkett*, 337 Mich App at 635. Questions of constitutional law are reviewed de novo. *LeBlanc*, 465 Mich at 579.

B. LIFETIME ELECTRONIC MONITORING

"The right of the people to be secure in their persons . . . against unreasonable searches . . . shall not be violated . . . ." US Const, Am IV; see also Const 1963, art 1, § 11. In *Hallak*, 310 Mich App at 577-578, the defendant argued that lifetime electronic monitoring violated the Fourth Amendment to the United States Constitution. This Court concluded "that lifetime electronic monitoring for a defendant 17 years or older convicted of CSC–II involving a minor under 13 is not unreasonable." *Id*. at 579. This Court explained that although "it may certainly be that such monitoring of a law-abiding citizen would be unreasonable, on balance the strong public interest in the benefit of monitoring those convicted of CSC–II against a child under

the age of 13 outweighs any minimal impact on defendant's reduced privacy interest." *Id*. at 581. In this case, considering that defendant was convicted of two counts of CSC-I and one count of CSC-II against a child under the age of 13, defendant's lifetime electronic monitoring requirement does not constitute an unreasonable search in violation of the United States or Michigan Constitutions. See *id*. at 579, 581.

Affirmed.

/s/ Philip P. Mariani
/s/ Kathleen A. Feeney
/s/ Christopher M. Trebilcock