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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 20, 2026 10:22 AM
v	No. 372933 Wayne Circuit Court
KASHOUS CLIFTON WATSON, Defendant-Appellant.	LC No. 24-000319-01-FH

Before: MURRAY, P.J., and BOONSTRA and RIORDAN, JJ.

PER CURIAM.

Defendant appeals as of right his bench-trial conviction of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(2)(b) (victim under 13-years-old and defendant at least 17-years-old), for which he was sentenced to 5 to 15 years' imprisonment. We affirm.

I. FACTS

In July 2019, the then six-year-old victim spent two weeks at the home of her paternal grandmother, R. Robinson. The victim's uncle, defendant, also lived with Robinson, along with his friend, Christopher Warren. When the victim returned home, she showed her mother, K. Beyar, blood in her underwear. Beyar brought the victim to the Pediatric and Adolescent Center in Southgate, where Kimberly Dunleavy, a nurse practitioner, observed "a lot of whitish-yellow and green discharge" coming from the victim's vagina. Dunleavy was concerned about sexually transmitted diseases because green discharge indicated the presence of bacteria. Specifically, Dunleavy tested the victim for gonorrhea and chlamydia.

Two days later, the victim tested positive for gonorrhea. Dr. Andrew Hashikawa, a pediatrician and pediatric emergency medicine physician, performed a sexual assault examination on the victim, but did not make any traumatic findings. Shannon Schwartz, a pediatric nurse practitioner, performed a follow-up examination on the victim to ensure her gonorrhea infection was cleared. Child Protective Services and the Detroit Police Department were notified and began separate investigations into how the victim contracted gonorrhea. Beyar, Warren, the victim's stepfather, the victim's father, and her father's girlfriend all underwent testing and all tested

negative for gonorrhea. Defendant tested positive for gonorrhea. About a year later, the victim disclosed "something happened" with defendant, and he was charged with CSC-II.

At defendant's bench trial, the victim initially testified that she did not recall what happened, but admitted she did remember and just did not want to testify. The trial court questioned the victim on the difference between the truth and a lie and instructed her that if she did remember, she needed to testify about what she remembered. The victim stated she understood, and after a brief recess, testified that she was in defendant's bedroom one night when he asked her for a hug. When the victim complied, defendant's genitals touched her genitals underneath the victim's underwear. The victim described this contact as skin-to-skin. Beyar testified regarding the time line of events, and Warren testified regarding a conversation he had with defendant about the allegations. Dr. Hashikawa, Dunleavy, and Schwartz were qualified as experts, and generally opined that gonorrhea required direct contact with bodily fluids for transmission. The trial court convicted defendant, and this appeal followed.

II. JUDICIAL BIAS

Defendant argues that the trial court was biased against him, as shown by its improperly examining witnesses and invading the prosecutor's role to prove defendant's guilt beyond a reasonable doubt.

A. STANDARD OF REVIEW

"The question whether judicial misconduct denied defendant a fair trial is a question of constitutional law that this Court reviews de novo." *People v Stevens*, 498 Mich 162, 168; 869 NW2d 233 (2015). Because defendant failed to raise this issue in the trial court, we review his unpreserved argument for plain error affecting substantial rights. *People v Jackson*, 292 Mich App 583, 597; 808 NW2d 541 (2011).

> To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings. [*People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999) (citation omitted).]

"If defendant satisfies those three requirements, we must make a fourth determination: whether the plain error seriously affected the fairness, integrity, or public reputation of the judicial proceedings independent of defendant's innocence." *People v Anderson*, 341 Mich App 272, 280; 989 NW2d 832 (2022).

B. ANALYSIS

"The federal Due Process Clause of the Fourteenth Amendment and the Due Process Clause of the Michigan Constitution, Const 1963, art 1, § 17, guarantee a trial before an impartial judge and jury." *People v Loew*, 514 Mich 158, 185; 22 NW3d 323 (2024). See US Const, Am XIV. A defendant "is deprived of his right to a trial before an impartial judge only when the judge is actually biased," or when "experience teaches that the probability of actual bias on the part of

the judge or decisionmaker is too high to be constitutionally tolerable." *Loew*, 514 Mich at 185 (quotation marks and citations omitted).

Defendant argues that the trial court was actually biased because it was so offended that the six-year-old victim contracted gonorrhea, it "effectively eliminated" defendant's presumption of innocence from the moment it learned defendant was the only adult who tested positive for gonorrhea. According to defendant, once the test result was disclosed, the trial court decided he was guilty of CSC-II before the prosecutor had proven his guilt beyond a reasonable doubt, denying him a fair and impartial trial. He also asserts that the trial court's bias led to the trial court asking questions on behalf of the prosecution.

"A defendant must overcome a heavy presumption of judicial impartiality when claiming judicial bias." *People v Willis*, 322 Mich App 579, 588; 914 NW2d 384 (2018). "In determining whether a trial judge's conduct deprives a defendant of a fair trial, this Court considers whether the 'trial judge's conduct pierces the veil of judicial impartiality.' " *Id*. (citation omitted). The veil of judicial impartiality is pierced "when, considering the totality of the circumstances, it is reasonably likely that the judge's conduct *improperly influenced the jury* by creating the appearance of advocacy or partiality against a party." *Stevens*, 498 Mich at 164 (emphasis added). Importantly, because this was a bench trial, "concern over the effect of the judge's comments and conduct did not exist." *In re Forfeiture of $1,159,420*, 194 Mich App 134, 153; 486 NW2d 326 (1992). "Nevertheless, a judge's comments and conduct can indicate a possible bias." *Id*. "The issue of bias or prejudice should come to this Court's attention only when a litigant can show that the trial judge's views controlled his decision-making process." *Id*.

Inappropriate questioning of witnesses can constitute judicial misconduct. *Stevens*, 498 Mich at 172-173. "[W]hen evaluating a judge's questioning of witnesses, a reviewing court must first bear in mind that such interrogation is generally appropriate under MRE 614(b)." *Id*. at 173. See MRE 614(b) ("The court may examine a witness regardless of who calls the witness.").[1] And, because "the central object of judicial questioning should be to clarify . . . it is appropriate for a judge to question witnesses to produce fuller and more exact testimony or elicit additional relevant information." *Stevens*, 498 Mich at 173. Importantly, "a trial judge has more discretion to question witnesses during a bench trial than during a jury trial . . . ." *In re Forfeiture of $1,159,420*, 194 Mich App at 153.

Defendant first takes issue with the direction the trial court gave to the prosecution during the victim's testimony. Defendant cites the following exchange:

> *Q*. So before we took a little break we went over the truth versus a lie and not knowing something, right? And actually not remembering or remembering and just no wanting to say. Do you remember when the Judge asked you about that?

[1] The Michigan Rules of Evidence were substantially amended on September 20, 2023, effective January 1, 2024. See ADM File No. 2021-10, 512 Mich 1xiii (2023). When *Stevens* was decided, MRE 614(b) stated: "The court may interrogate witnesses, whether called by itself or by a party." *Stevens*, 498 Mich at 173 n 4.

A. Yes.

Q. So before the break was there anything that you said you did not remember that you actually did?

A. Yes.

Q. Can you tell me what you actually remember that you said you didn't?

A. It was under.

Q. When you say it was under, what do you mean?

A. When you asked me if it was over or under, it was under.

Q. Over or under the underwear?

A. Yes.

Q. That was the touching?

A. Um-hum.

Q. And was there anything else?

A. He was wearing underwear.

Q. And when you say he, just so that we're clear, who is he?

A. [Defendant].

Q. And before I ask you—

The Trial Court. I'm sorry. I have to ask this question.

The Prosecutor. Sure.

The Trial Court. So you said it was—did you say it was over the underwear or under the underwear?

The Victim. Under.

The Trial Court. Okay. Thank you. You might want to ask more questions about that.

The Prosecutor. Yes.

The Trial Court. I don't want to ask too many questions because it's not my role as a Judge but just for the record to be clear.

The Prosecutor. I'm getting there, Judge.

Defendant argues that the trial court's instruction to ask more questions on this topic notified the prosecutor that more facts were needed to prove the case, demonstrating the trial court and the prosecutor were "aligned against" defendant. However, "[i]t is well established that the trial court has a duty to control trial proceedings in the courtroom and has wide discretion and power in fulfilling that duty." *People v Biddles*, 316 Mich App 148, 153; 896 NW2d 461 (2016).

> A court must "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." [*Id*. at 153-154 (quotation marks and citation omitted).]

See also MRE 611(a). Here, the trial court's instruction was within its discretion to control the trial proceedings because it is clear the trial court's goal was to effectively determine the truth from the victim's testimony. Initially, the trial court interjected to clarify the victim's testimony, as is appropriate. See *Stevens*, 498 Mich at 173. The trial court then noted it did not want to invade the prosecutor's role, but instructed the prosecutor to continue clarifying that testimony. There is no indication the trial court was motivated by bias against defendant, especially considering the trial court would have been within its rights to continue questioning the victim. See *id*.

Defendant also challenges the trial court's interruption of Beyar's cross-examination, arguing that the trial court helped her to clarify the time line and elicited previously unmentioned information that the victim had blood in her underwear. Here, the prosecutor's direct examination of Beyar was confusing, and at the end, it was unclear why Beyar took the victim to the doctor or when different portions of the CPS investigation occurred. Accordingly, the trial court asked Beyar when CPS began investigating, whether it occurred before the victim's forensic interview, and what Beyar understood about why CPS was investigating. Beyar stated the CPS investigation stemmed from the victim testing positive for gonorrhea, which she learned after the doctor's visit, at which point the trial court asked Beyar:

> *Q*. Why did you take her to the doctor's in the first place?
>
> *A*. That was kind of earlier when I wanted to clarify when [the prosecutor] was asking me. When she came home from her visit, she came to me Monday morning with blood in her underwear.
>
> *Q*. Okay. And that caused you concern.
>
> *A*. That caused me concern.
>
> *Q*. Thank you. Go ahead. That makes a little more sense.

Nothing about this line of questioning indicates the trial court was biased against defendant, for as defendant acknowledges, the court's questions were posed to clarify the time line of events, and the reason why Beyar took the victim to the hospital was relevant information related to that time line. *Stevens*, 498 Mich at 173. While Beyar did not previously mention this information,

she attempted to clarify it to the trial court during her direct examination, but was instructed to only respond to the questions asked by the attorneys. Notably, defendant does not argue this information was inadmissible, only that it was not the trial court's job to elicit it. However, "it is appropriate for a judge to question witnesses to produce fuller and more exact testimony or elicit additional relevant information." *Id*. Accordingly, the trial court's clarifying questions to Beyar were not inappropriate.

Next, defendant turns to the trial court's exchange with Beyar which occurred almost immediately after the aforementioned testimony:

> *Defense Counsel*. So we'll talk more about that in a second. In 2019, [the victim] was denying anyone touched her; is that correct?
>
> *Beyar*. Yeah.
>
> *Defense Counsel*. Okay.
>
> *The Trial Court*. Did you have a conversation with her at that time?
>
> *Beyar*. I don't remember if I outright asked her if anything happened.
>
> *The Trial Court*. When you say that she was denying it, did she say nobody touched me or did she say anything in that regard?
>
> *Beyar*. A lot kind of happened very quickly at that time so I just—I don't recall if I specifically asked her did somebody touch you. Because there was a lot of direction. There was a lot of, you know, don't coach her, don't this. So I don't know that I really even asked her because I was afraid that it would be seen as coaching. So I don't know that—
>
> *The Trial Court*. So did she deny it?
>
> *Beyar*. I don't remember.
>
> *The Trial Court*. Okay. Fair enough. I understand. Go ahead.

According to defendant, the trial court's intervention caused Beyar to immediately change her testimony, and "it's not the court's place to help the prosecution prove, or improve, their case." To the contrary, "it is appropriate for a judge to question witnesses to produce fuller and more exact testimony or elicit additional relevant information." *Stevens*, 498 Mich at 173. It is clear in this exchange that the trial court intervened to clarify if Beyar meant the victim was actively denying she had been touched or if she was simply refusing to make a disclosure. Accordingly, defendant has not established the trial court's questioning was inappropriate or motivated by bias.

Finally, defendant challenges the trial court's questioning of Warren. At the close of the prosecutor's direct examination, the trial court asked defense counsel if there was any objection to it asking Warren a question. Defense counsel had no objection, but now defendant takes issue with the following exchange:

The Trial Court. You said you talked with the Defendant about the allegations immediately after? Or you had [a] conversation with him; is that correct?

Warren. Yeah. It was told—

The Trial Court. Just one second. Is that correct?

Warren. Yeah.

The Trial Court. So what did the Defendant say?

Warren. Well, they came in—well, before that his mom had told me she had to take him to the hospital and said he was messing with some girls—

Defense Counsel. I object to this testimony, Judge.

The Trial Court. I don't know why the prosecutor didn't ask it, quite frankly, respectfully. I mean, this is a party admission from the Defendant. I mean, it's—it would be allowed in, the Defendant's own statement. I think that you are more than appropriate objecting but I want to know what was said.

Defense Counsel. I have no problem with—I have an issue with what the mother said.

The Trial Court. Okay.

Defense Counsel. She's not here to testify. She's not—

The Trial Court. 100 percent. So your objection is what anybody else said.

Defense Counsel. Correct.

The Trial Court. That's not what my question was but that's more than valid. Sir, don't tell me what anyone else said. I can only know what the Defendant said.

According to defendant, the trial court "appears to question the witness, scold the prosecutor for not asking it, then acknowledge the subjectivity of a question that the court has asked a witness in open court, but somehow failing to mention whether he overruled or sustained the anticipated objection." This mischaracterizes the record. Defense counsel did not object to testimony about what defendant said during his conversation with Warren, but objected to testimony about what other individuals may have said. And again, "it is appropriate for a judge to question witnesses to produce fuller and more exact testimony or elicit additional relevant information." *Stevens*, 498 Mich at 173. Clearly, information regarding what defendant said during a conversation about the victim testing positive for gonorrhea would be relevant information. While the trial court expressed confusion as to why the prosecutor would not have

asked about that conversation, this does not indicate the trial court was biased against defendant, especially considering the trial court could appropriately ask the question.

In sum, defendant has not shown any of the trial court's questioning was improper or the result of bias, nor has he demonstrated his presumption of innocence was violated. Because defendant has not shown any error, he is not entitled to relief under plain-error review. See *Carines*, 460 Mich at 763.

III. EXPERT TESTIMONY

Defendant argues the trial court erred by allowing expert testimony from Dr. Hashikawa, Dunleavy, and Schwartz because they had limited experience with gonorrhea and were not qualified to discuss how gonorrhea can be transferred.

A. STANDARD OF REVIEW

A trial court's decision regarding the admissibility of expert testimony is reviewed for an abuse of discretion. *People v Unger*, 278 Mich App 210, 216; 749 NW2d 272 (2008). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *Id*. at 217. However, unpreserved issues are reviewed for plain error affecting substantial rights. *People v Thorpe*, 504 Mich 230, 252; 934 NW2d 693 (2019).

B. ANALYSIS

"MRE 702 establishes prerequisites for the admission of expert witness testimony." *People v Kowalski*, 492 Mich 106, 119; 821 NW2d 14 (2012). Under MRE 702:

> A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:
>
> (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
>
> (b) the testimony is based on sufficient facts or data;
>
> (c) the testimony is the product of reliable principles and methods; and
>
> (d) the expert's opinion reflects a reliable application of the principles and methods to the facts of the case. [MRE 702].

"MRE 702 incorporates the standards of reliability established in *Daubert v Merrell Dow Pharms, Inc*, 509 US 579; 113 S Ct 2786; 125 L Ed 2d 469 (1993)." *People v Muniz*, 343 Mich App 437, 443; 997 NW2d 325 (2022).

Defendant challenges the trial court's qualification of Dr. Hashikawa as an expert in pediatric medicine, and Dunleavy and Schwartz as expert pediatric nurse practitioners, because their limited experience with gonorrhea rendered them unqualified to opine on how gonorrhea was

transmitted. However, at no point does defendant address the witnesses' qualifications. Instead, defendant asserts that growing evidence of scientific studies establish that gonorrhea can be contracted through more than just sexual contact or intercourse, which directly contradicts the expert testimony. For several reasons defendant's argument fails.

First, defendant attached 55 pages to his brief as "Exhibit A–gonorrhea transmission studies," but provides no explanation or summary of these studies, apparently expecting this Court to provide his argument for him. This we cannot do. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998) ("An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . ."). The exhibit is also an improper attempt to expand the record on appeal.

Second, with respect to Dr. Hashikawa's expert qualification, defendant waived review of this issue because defense counsel explicitly stated she had no objection to qualifying him as an expert witness. See *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000) "One who waives his rights under a rule may not then seek appellate review of a claimed deprivation of those rights, for his waiver has extinguished any error." *Id*. (quotation marks and citation omitted).

Third, defendant's argument fails on the merits. Defendant's cursory assertion that Dr. Hashikawa had limited experience with gonorrhea belies the record. Dr. Hashikawa had been an emergency room pediatrician for 14 years and was board-certified in pediatrics and pediatric emergency medicine. Dr. Hashikawa explained that he was trained to treat sexually transmitted infections as part of his pediatric training and received specific training for sexual abuse and physical abuse as part of the national training for board-certified pediatric emergency medicine physicians. Dr. Hashikawa was experienced in pediatric STDs and estimated that he had performed over 20 sexual assault examinations in his 14 years of employment. As such, Dr. Hashikawa's knowledge, training, and experience qualified him to testify regarding how gonorrhea is transmitted. See *People v Whitfield*, 425 Mich 116, 122-123; 388 NW2d 206 (1986) (finding a board-certified family practitioner was "clearly qualified by knowledge, experience, and training to testify concerning the transmission of gonorrhea" where he "had treated patients with gonorrhea, including one three-year-old-child, and he was familiar with the literature on the subject"). Additionally, contrary to defendant's implication on appeal, even if there were studies contradictory to Dr. Hashikawa's opinion, those studies would not impact Dr. Hashikawa's general credentials to testify as an expert. See *Unger*, 278 Mich App at 217. Defendant is not entitled to relief under plain-error review.

With respect to Dunleavy and Schwartz, considering their education and knowledge, the trial court did not plainly err when it qualified them as experts based on their experience as pediatric nurse practitioners. Each witness had a bachelor's degree in nursing, had obtained a master's degree to become a pediatric nurse practitioner, participated in continuing education, and was up-to-date on required certifications. Dunleavy had been employed as a pediatric nurse practitioner for about nine years, during which time she estimated she saw "tens of thousands" of patients, while Schwartz estimated she had seen "thousands" of pediatric patients during her employment. Schwartz testified she was familiar with gonorrhea because she studied STDs while in school to become a nurse practitioner, and Dunleavy testified "we're taught if there is any green discharge, to highly suspect gonorrhea and chlamydia." Schwartz estimated she treated about 10 STD cases each year, while Dunleavy estimated she saw at least five or six per year. While

Schwartz stated she was not an expert, this statement was in response to a question regarding the amount of discharge that would properly correlate to a recent exposure to gonorrhea, and did not negate her other training and experience. And again, even if the trial court erred in qualifying them as experts, defendant cannot establish plain error affecting his substantial rights where Dr. Hashikawa's expert testimony was properly admitted. See *Carines*, 460 Mich at 763.

IV. PROSECUTORIAL ERROR

Defendant argues he is entitled to a new trial because the prosecutor committed misconduct.[2] Specifically, defendant argues the prosecutor mischaracterized the victim's testimony, placing facts into evidence that the victim did not testify about, and instructed the victim to lie during her testimony to ensure the prosecutor could prove her case.

A. STANDARD OF REVIEW

Because defendant failed to "timely and specifically challenge the prosecutor's statements or conduct," his argument is unpreserved. *People v Thurmond*, 348 Mich App 715, 735; 20 NW3d 311 (2023). "The test for prosecutorial error is whether the defendant was denied a fair trial." *Id*. at 736. However, unpreserved prosecutorial error arguments are reviewed for plain error affecting defendant's substantial rights. *Id*.

B. ANALYSIS

This Court reviews prosecutorial error challenges on a case-by-case basis, and "must examine the entire record and evaluate a prosecutor's remarks in context." *People v Dobek*, 274 Mich App 58, 64; 732 NW2d 546 (2007). "A prosecutor's comments are to be evaluated in light of defense arguments and the relationship the comments bear to the evidence admitted at trial." *Id*. Generally, prosecutors "are free to argue the evidence and all reasonable inferences from the evidence as it relates to [their] theory of the case." *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995) (quotation marks and citation omitted; alteration in original).

Initially, we note that defendant's argument selectively quotes from the transcript, omitting portions to create his own narrative. According to defendant:

> First, when [the prosecutor] asked [the victim] "was any other part of defendant's body touching your body?" [A]nswer: "yeah, yes;" prosecution: "ok. So what part of your body was being touched?" Answer: "my privates." Prosecution began the next question with: "when [defendant]'s private touched your private . . . ." This is a clear and obvious mischaracterization of the [victim]'s testimony and allowed the

[2] This Court noted in *People v Cooper*, 309 Mich App 74, 87-88; 867 NW2d 452 (2015), that the phrase "prosecutorial misconduct" serves as a term of art often used to describe any error committed by the prosecution, even though claims of inadvertent error by the prosecution are "better and more fairly presented as claims of 'prosecutorial error,' with only the most extreme cases arising to the level of 'prosecutorial misconduct.' " Defendant's challenges here fall squarely within prosecutorial error.

prosecutor to place a fact in evidence that was not testified to by the [victim]. The [victim] testified that the skin-to-skin touching that she referred to was stomach-to-stomach when she hugged [defendant] while he was on his back, and did not mention any other body parts. Particularly, the [victim] did not state that Defendant's penis was touching her private parts, that was surreptitiously inserted by the prosecutor, without objection, and accepted as fact by the trier-of-fact. She did not testify that [defendant]'s penis touched her private parts, but that their skin-to-skin touching was in fact her stomach touching his stomach when they hugged.

In actuality, the transcript reads:

Q. So your stomach is touching his stomach?

A. Yes.

Q. Okay. And then was any other part of [defendant]'s body touching your body?

A. Yeah. Yes.

Q. Okay. So what part of your body was being touched?

A. My privates.

Q. Okay. . . . So what do you use your private for?

A. Two [sic] urine.

Q. To urine. Okay. And what part of [defendant]'s body was touching the part that you use to urine?

A. His private parts.

Q. Can you tell me what [defendant] would use his private part for?

A. To pee.

Q. Was [defendant]'s private part touching your private part over or under your clothing?

A. I don't recall.

Q. Was your underwear still on when [defendant]'s private touched your private?

A. I don't recall.

Q. Do you—did you ever see any part of [defendant]'s body?

A. I don't recall.

Q. When [defendant]'s private touched your private, was [defendant]'s body doing anything?

A. I don't recall that either.

Later, the prosecutor asked: "[W]hen [defendant]'s private area touched the area that you use to urine under your underwear, was that skin-to-skin or something different," to which the victim replied: "Skin-to-skin." Clearly, defendant's argument fails because it is not based on the record, and in fact completely misrepresents the record.

Defendant also seems to imply that the prosecutor influenced the victim's testimony because the victim "changed her story to suddenly recalling being touched underneath" her underwear after a recess in the proceedings. Again, defendant ignores that this break in the proceedings occurred after the victim testified she remembered more than what she admitted in her testimony, but did not want to testify. The trial court instructed the victim that she could not testify that she did not remember if she did, in fact, remember what happened, and the victim stated she understood. When proceedings resumed, the victim testified about what she remembered. Regardless, the argument defendant merely hints at is abandoned because he has not provided any caselaw, argument, or evidence that the prosecutor spoke with the victim during the recess.

Defendant also notes that evidence was presented that the victim told Beyar a classmate touched her inappropriately, but Beyar instructed the victim that it could not have been her classmate because he did not have an STD. It is unclear if defendant is implying Beyar told the victim to lie or how this indicates the prosecutor committed error. Accordingly, this unclear argument is abandoned. See *Kelly*, 231 Mich App at 640-641.

Finally, defendant argues the prosecutor "uses" the victim "to assert, for the first time, that she told [Robinson] what happened right after she visited [defendant]'s room," to allow the prosecutor "to argue a sexual purpose in this case." The victim testified that she told Robinson about the incident immediately after it happened, but she could not remember how Robinson responded. Defendant's argument implies that because the victim never stated that she told Robinson until she testified at trial, the victim is lying; however, defendant's argument rests entirely on his opinion. Defendant offers no proof that the victim never previously made this statement, but even if she did not, that does not mean the statement itself is untrue. Further, even if it were untrue, defendant offers no proof that the prosecutor instructed the victim to lie at trial. This speculative argument is also abandoned. See *Kelly*, 231 Mich App at 640-641.

V. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues that trial counsel was unconstitutionally ineffective for failing to provide a defense, failing to present evidence or call witnesses, and failing to raise objections and preserve issues. Defendant asserts the cumulative effect of trial counsel's errors prejudiced him and denied him a fair trial.

A. STANDARD OF REVIEW

An ineffective assistance of counsel argument "presents a mixed question of fact and constitutional law." *People v Armstrong*, 490 Mich 281, 289; 806 NW2d 676 (2011). "The trial court must first find the facts and then decide whether those facts constitute a violation of the defendant's constitutional right to effective assistance of counsel." *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004). "A trial court's findings of fact, if any, are reviewed for clear error, and this Court reviews the ultimate constitutional issue arising from an ineffective assistance of counsel claim de novo." *People v Petri*, 279 Mich App 407, 410; 760 NW2d 882 (2008). "Clear error exists if the reviewing court is left with a definite and firm conviction that the trial court made a mistake." *Armstrong*, 490 Mich at 289. "Where claims of ineffective assistance of counsel have not been preserved, our review is limited to errors apparent on the record." *Matuszak*, 263 Mich App at 48.

B. ANALYSIS

The United States and Michigan Constitutions entitle a criminal defendant to assistance of counsel. US Const, AM VI; Const 1963, art 1, § 20. Counsel must be effective to satisfy the constitutional requirement. *Strickland v Washington*, 466 US 668, 686; 104 S Ct 2052; 80 L Ed 2d 674 (1984). "Effective assistance is strongly presumed, and the defendant bears the heavy burden of proving otherwise." *People v Haynes*, 338 Mich App 392, 429; 980 NW2d 66 (2021) (quotation marks and citations omitted). "In order to obtain a new trial because of ineffective assistance of counsel, a defendant must show that (1) counsel's performance fell below an objective standard of reasonableness and (2) but for counsel's deficient performance, there is a reasonable probability that [the] outcome would have been different." *People v Yeager*, 511 Mich 478, 488; 999 NW2d 490 (2023) (quotation marks and citation omitted). "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id*. (quotation marks and citations omitted).

"The defendant has the burden of establishing the factual predicate of his ineffective assistance claim." *People v Douglas*, 496 Mich 557, 592; 852 NW2d 587 (2014). On appeal, defendant fails to meet this burden. Defendant first argues that trial counsel was ineffective for failing to provide a defense where she did not challenge the victim's credibility, a key component to support her presumed trial strategy. But, contrary to defendant's assertion, trial counsel (1) elicited testimony from the victim regarding her inability to remember things and her lifelong struggle with memory problems, and (2) introduced evidence that the victim initially identified a classmate of hers as someone who touched her inappropriately. Trial counsel did provide a defense to challenge the victim's credibility.

Defendant next argues that trial counsel was ineffective for failing to consult with an expert witness regarding the transmission of gonorrhea. While defendant presumes that trial counsel failed in this regard, it is not apparent from the record that trial counsel did not consult with an expert. Nor does defendant provide any offer of proof that he has located an expert witness willing to testify. Indeed, it is equally plausible that trial counsel consulted with an expert, but could not find one willing to testify favorably for defendant. Defendant argues that he suffered prejudice because if the trial court had been presented with evidence that gonorrhea could be transmitted

nonsexually, it may have been less persuaded by Dr. Hashikawa's testimony. But, the trial court *was* presented with this evidence, as Dunleavy posited that very point.

Finally, defendant argues that trial counsel was ineffective for failing to raise objections and preserve issues when trial counsel (1) failed to object to admitting expert testimony, (2) failed to object to the prosecutor's mischaracterization of the victim's testimony, and (3) failed to impeach the victim's testimony with evidence of her prior inconsistent statements from "her investigatory statements, prior conversations, and preliminary examination testimony." As discussed, the expert testimony was properly admitted, and the only mischaracterization of the victim's testimony came from defendant. Trial counsel is not ineffective for failing to raise a futile objection. *People v Fike*, 228 Mich App 178, 182-183; 577 NW2d 903 (1998). Regarding trial counsel's failure to impeach the victim with her prior inconsistent statements, defendant has not identified what statements he is referring to, nor has he provided any of the documents he references to this Court.

Because defendant has failed to establish the factual predicate of each of his ineffective-assistance arguments, he is not entitled to relief. See *Douglas*, 496 Mich at 592; *Yeager*, 511 Mich at 488. For these reasons, defendant's cumulative-error argument based on his ineffective-assistance argument also fails. See *Dobek*, 274 Mich App at 106.

VI. GREAT WEIGHT OF THE EVIDENCE

For his final argument, defendant argues that his conviction was against the great weight of the evidence because there was no evidence the victim engaged in any sexual activity or penetration.

A. STANDARD OF REVIEW

This Court reviews a great-weight challenge by deciding whether "the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v Cameron*, 291 Mich App 599, 616-617; 806 NW2d 371 (2011). "The trial court's factual findings in a bench trial are reviewed for clear error." *Anderson*, 341 Mich App at 277. "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake has been made." *Id*. (quotation marks and citation omitted).

B. ANALYSIS

A new trial may be granted on all, or some of the issues, if the verdict is against the great weight of the evidence. *People v Lemmon*, 456 Mich 625, 642; 576 NW2d 129 (1998). See MCR 2.611(A)(1)(e). A verdict is against the great weight of the evidence "only when the evidence does not reasonably support it and it was more likely the result of causes outside the record, such as passion, prejudice, sympathy, or some other extraneous influence." *People v Lacalamita*, 286 Mich App 467, 469; 780 NW2d 311 (2009). "Conflicting testimony and questions of witness credibility are generally insufficient grounds for granting a new trial. Absent exceptional circumstances, issues of witness credibility are for the trier of fact." *Anderson*, 341 Mich App at 277 (quotation marks and citation omitted).

Defendant was convicted of CSC-II under MCL 750.520c(2)(b), which required the trial court to find that he " 'engaged in sexual contact with' the victim who was 'under 13 years of age' when he was '17 years of age or older.' " *People v DeLeon*, 317 Mich App 714, 719; 895 NW2d 577 (2016), quoting MCL 750.520c(1)(a) and (2)(b) (alteration omitted). Sexual contact is defined as " 'the intentional touching of the victim's or [defendant's] intimate parts . . . if that intentional touching can reasonably be construed as being for the purpose of sexual arousal or gratification, [or] done for a sexual purpose . . . .' " *DeLeon*, 317 Mich App at 719, quoting MCL 750.520a(q).

The victim testified that defendant asked her for a hug, and when she complied, defendant's genital area touched her genital area underneath her underwear. The victim described the contact as skin-to-skin. Although a victim's testimony alone can be sufficient to convict a defendant of criminal sexual conduct, *DeLeon*, 317 Mich App at 719, as the trial court noted, the victim's testimony was corroborated by the fact that she tested positive for gonorrhea. Dr. Hashikawa explained that it was extremely rare for children to contract gonorrhea nonsexually. Defendant was the only adult in the victim's life to test positive for gonorrhea. Accordingly, the trial court's finding that the victim contracted gonorrhea from a sexual contact with defendant was reasonably supported by the evidence.

Indeed, defendant's arguments in support of his great-weight challenge only work if this Court completely ignores the victim's testimony. While defendant never explicitly states the victim is lying, his arguments presume the genital contact she described did not occur. For instance, defendant argues the prosecutor failed to establish his contact with the victim was for a sexual purpose because an uncle hugging his niece is nonsexual, and he notes the victim testified she "did not recall seeing [defendant]'s penis, nor did she see him moving around, or anything come out of his penis." Again, the victim testified that during the hug, defendant's genitals had direct, skin-to-skin contact with her genitals. "[W]hen determining whether touching could be reasonably construed as being for a sexual purpose, the conduct should be 'viewed objectively' under a 'reasonable person' standard." *DeLeon*, 317 Mich App at 719-720 (quotation marks and citation omitted). A reasonable person could find that an uncle having skin-to-skin, genital contact with his six-year-old niece could reasonably be construed as being for a sexual purpose. See *People v Piper*, 223 Mich App 642, 647; 567 NW2d 483 (1997) (to convict a defendant of CSC-II, the prosecutor is only required to prove "that the intentional touch could *reasonably be construed* as being for [a] sexual purpose") (quotation marks and citation omitted; alteration in original).

Additionally, and contrary to defendant's arguments, the trial court acknowledged the victim's memory issues when making its findings. Noting that the victim was an 11-year-old girl testifying about events that occurred when she was six-years-old, the trial court still found the victim credible beyond a reasonable doubt. This Court will not "interfere with the trier of fact's role of determining the credibility of the witnesses." See *People v Kanaan*, 278 Mich App 594, 620; 751 NW2d 57 (2008), and MCR 2.613(C).

Defendant also argues that because Dr. Hashikawa did not find evidence of trauma when physically examining the victim, there was no evidence that the victim "had been sexually penetrated or had otherwise engaged in any sexual or physical activity." For support, defendant is presumably relying on his attached studies indicating that gonorrhea can be transmitted nonsexually, but, defendant ignores the victim's testimony recounting defendant's sexual contact,

which the trial court found credible. Regardless, the lack of evidence of sexual penetration is irrelevant to defendant's CSC-II conviction, which does not require sexual penetration, only sexual *contact*. See MCL 750.520c(1).

Finally, defendant reiterates his earlier argument that the victim lied when she testified that she told Robinson what happened that same day. According to defendant, the prosecutor instructed the victim to incorporate this lie into her testimony when the prosecutor realized she had no other way to prove defendant's actions were for a sexual purpose. As noted, defendant offers no proof to support these speculations. Regardless, even if the victim never told Robinson what happened, that does not negate the rest of her testimony, which the trial court found credible. And the victim's testimony was sufficient to convict defendant of CSC-II. See *DeLeon*, 317 Mich App at 719. Defendant failed to show the great weight of the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow his conviction to stand, and accordingly, defendant is not entitled to a new trial. See *Cameron*, 291 Mich App at 616-617.

Affirmed.

/s/ Christopher M. Murray
/s/ Mark T. Boonstra
/s/ Michael J. Riordan