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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN MICHAEL EASTMAN,

Defendant-Appellant.

UNPUBLISHED
September 02, 2026
11:17 AM

No. 373630
Midland Circuit Court
LC No. 22-009204-FC

Before: GADOLA, C.J., and RIORDAN and SWARTZLE, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of three counts of first-degree criminal sexual conduct (CSC-I) under MCL 750.520b(1)(a), one count of CSC-I under MCL 750.520b(1)(b), one count of second-degree criminal sexual conduct (CSC-II) under MCL 750.520c(1)(a), one count of CSC-II under MCL 750.520c(1)(b), and one count of third-degree criminal sexual conduct (CSC-III) under MCL 750.520d(1). The trial court sentenced defendant to concurrent sentences of 30 years to 570 months in prison for each CSC-I conviction under MCL 750.520b(1)(a), 225 to 570 months in prison for the CSC-I conviction under MCL 750.520b(1)(b), 86 months to 15 years for each CSC-II conviction, and 95 months to 15 years for defendant's CSC-III conviction. Defendant appeals as of right. We affirm in part, vacate in part, and remand to the trial court.

I. FACTS

For over two years, defendant sexually abused his daughter, LE, beginning when she was 12 years old and in seventh grade and continuing until she was 14 years old and in ninth grade, at which point she disclosed the abuse to a friend and thereafter to law enforcement. During the police investigation, defendant confessed to police that he engaged in multiple acts of sexual activity with LE, including digital penetration, fellatio, cunnilingus, and use of a vibrator. Defendant confirmed to police LE's report that his sexual abuse of LE typically occurred when LE arrived home from school each day and the two of them were alone. He admitted that he perpetrated the abuse of LE under the guise that he was educating her about male anatomy and sexual activity. Although both LE and defendant stated that the abuse occurred when LE was

between the ages of 12 and 14 and in seventh through ninth grade, neither LE nor defendant were certain regarding the exact dates of all instances of abuse. Defendant does not dispute that he committed the sexual abuse, but he asserts that the penetrative acts constituting CSC-I occurred after LE reached age 13.

The jury found defendant guilty of the seven counts of criminal sexual conduct with which he was charged, including three counts of CSC-I under MCL 750.520b(1)(a) for engaging in sexual penetration with LE (digital penetration, fellatio, and cunnilingus) when she was under age 13. The jury also convicted defendant of one count of CSC-I under MCL 750.520b(1)(b)(*ii*) (penetration by object of victim 13 to 15 and related to perpetrator), one count of CSC-II under MCL 750.520c(1)(a) (sexual contact with victim under 13), one count of CSC-II under MCL 750.520c(1)(b)(*i*) or (*ii*) (sexual contact with victim 13 to 15 and residing with or related to perpetrator), and one count of CSC-III under MCL 750.520d(1)(a) or (d) (penetration of victim 13 to 15 or related to perpetrator). Defendant appeals, challenging his convictions and his sentences.

II. ANALYSIS

A. JURY COMPOSITION

Defendant contends that he is entitled to a new trial because several of the jurors also had served as jurors in a criminal trial the previous week, which defendant claims violated MCL 600.1307a(1)(d) and therefore violated his right to an impartial jury. We review de novo whether a defendant was denied his or her constitutional right to an impartial jury. *People v Bryant*, 491 Mich 575, 595; 822 NW2d 124 (2012). In this case, we disagree that defendant is entitled to a new trial.

A defendant in a criminal prosecution has a constitutional right to be tried by an impartial jury. *People v Miller*, 482 Mich 540, 547; 759 NW2d 850 (2008), citing US Const, Am VI; Const 1963, art 1, § 20. A criminal defendant does not have a constitutional right to be tried by jurors who have not served on a jury in the previous year, however. That requirement is statutorily imposed by MCL 600.1307a, which provides in relevant part:

> (1) To qualify as a juror, an individual must meet all of the following criteria:
>
> * * *
>
> (d) Not have served as a petit or grand juror in a court of record during the preceding 12 months.
>
> * * *
>
> (7) For the purposes of this section and sections 1371 to 1376 [MCL 600.1371 to 600.1376], an individual has served as a juror if that individual has been paid for jury service.

Voir dire provides the parties and the trial court the opportunity to elicit sufficient information to determine whether a prospective juror is qualified to serve and whether a basis exists to exclude the juror. *People v Helmer*, ___ Mich App ___, ___; ___ NW3d ___ (2026)

(Docket No. 369063); slip op at 8. Under MCR 6.412(D)(1), "[a] prospective juror is subject to challenge for cause on any ground set forth in MCR 2.511(E) or for another reason recognized by law." MCR 2.511(E) in turn provides a list of bases for challenging a juror for cause, including under subrule (E)(1) when the prospective juror "is not qualified to be a juror."

In this case, at the beginning of voir dire, the trial court noted that certain of the prospective jurors in the jury pool had served as jurors in a criminal trial "of a similar nature" the previous week. The trial court identified those jurors by a show of hands, name, and juror number. Several of the jurors who had served the previous week thereafter were selected as jurors for defendant's trial. Defense counsel at trial did not object or otherwise attempt to disqualify, for cause or otherwise, any of the jurors who had served the previous week. Rather, after participating in voir dire and exercising peremptory challenges, defense counsel stated, "I'm satisfied."[1]

"[W]hen a litigant fails to timely assert a right or object to an alleged error, it is deemed to be *forfeited*, but the error is not extinguished." *People v King*, 512 Mich 1, 9-10; 999 NW2d 670 (2023). In contrast, "waiver is the intentional relinquishment or abandonment of a known right." *Id*. at 9 (quotation marks and citations omitted). "A waiver extinguishes the right, as well as any right to pursue an alleged error on appeal." *Id*. " '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*., quoting *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

Specifically with regard to jury selection, "[a]n expression of satisfaction with a jury made at the close of voir dire examination waives a party's ability to challenge the composition of the jury thereafter impaneled and sworn." *People v Hubbard (After Remand)*, 217 Mich App 459, 466; 552 NW2d 493 (1996), overruled in part on other grounds *People v Harris*, 495 Mich 120, 123; 845 NW2d 477 (2014). See also *People v Rose,* 268 Mich 529, 531; 256 NW 536 (1934) ("If the objecting party afterwards expresses himself as satisfied with the jury, he thereby waives the error.").

Here, defense counsel expressed satisfaction with the jury after being advised that certain of the jurors had served as jurors in a trial the previous week. Defendant thereby extinguished any error on that basis and also waived any appellate objection on that basis. See *King*, 512 Mich at 9. Even if the allegation of error had not been waived, however, defendant has not demonstrated that he was prejudiced by the noncompliance with MCL 600.1307a, which is necessary to warrant appellate relief under MCL 600.1354(1),[2] or under a plain-error analysis necessary for an unpreserved challenge pursuant to *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Concerning prejudice, "the proper inquiry is whether the defendant was denied his right

[1] The record indicates that defense counsel exercised four of his allotted five peremptory challenges, see MCR 6.412(E)(1), before expressing satisfaction with the panel.

[2] MCL 600.1354(1) provides in relevant part that "[f]ailure to comply with the provisions of this chapter shall not . . . affect the validity of a jury verdict unless the party . . . claiming invalidity has made timely objection and unless the party demonstrates actual prejudice to his cause and unless the noncompliance is substantial."

to an impartial jury." *Miller*, 482 Mich at 561. "[J]urors are presumed to be impartial, until the contrary is shown. The burden is on the defendant to establish that the juror was not impartial or at least that the juror's impartiality is in reasonable doubt." *Id*. at 550 (quotation marks, citation, ellipsis and footnote omitted). See also *id*. at 548 n 8. Here, defendant has not demonstrated that the participation of certain jurors in a trial the previous week denied him an impartial jury.[3] Because defendant waived any appellate review regarding the composition of the jury, defendant is not entitled to a new trial on that basis.

B. SUFFICIENCY/GREAT WEIGHT OF THE EVIDENCE

Defendant contends that the prosecution did not present evidence at trial sufficient to prove beyond a reasonable doubt that LE was under age 13 when the charged acts of digital penetration, fellatio, and cunnilingus occurred, and therefore failed to prove the three counts of CSC-I under MCL 750.520b(1)(a). He also argues that the CSC-I convictions were contrary to the great weight of the evidence. We conclude that one of the CSC-I convictions was not supported by sufficient evidence.

We review a challenge to the sufficiency of the evidence de novo. *People v Wang*, 505 Mich 239, 251; 952 NW2d 224 (2020). When determining whether sufficient evidence was introduced to sustain a conviction, we review the evidence in the light most favorable to the prosecution and consider whether there was sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt. *People v Oros*, 502 Mich 229, 239; 917 NW2d 559 (2018). In doing so, we draw all reasonable inferences and make credibility choices in support of the jury's verdict. *Id*. Circumstantial evidence and the reasonable inferences drawn from the evidence can constitute satisfactory proof of the elements of the crime. *People v Bailey*, 310 Mich App 703, 713; 873 NW2d 855 (2015). Further, the prosecution "is not obligated to disprove every reasonable theory consistent with innocence to discharge its responsibility; it need only convince the jury in the face of whatever contradictory evidence the defendant may provide." *Id*. (quotation marks and citation omitted).

A verdict is against the great weight of the evidence if "the evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *People v Anderson*, 322 Mich App 622, 632; 912 NW2d 607 (2018) (quotation marks and citation omitted). "[A] verdict may be vacated 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). Decisions on credibility are left to the jury, and we will grant a new trial only if testimony

[3] Defendant argues that he was disadvantaged because the jurors, who had found a defendant guilty of criminal offenses in the previous trial, were familiar with the judge, court staff, and prosecuting attorney. The prosecution points out, however, that in the trial the previous week, the jurors found the defendant not guilty of a CSC charge. Defense counsel may have intentionally retained jurors who demonstrated the ability to find a CSC suspect not guilty as a trial strategy.

was so impeached that it lost all probative value or if the evidence defies physical reality. *Anderson*, 322 Mich App at 632.

In addition, to preserve for appeal a challenge that the verdict is against the great weight of the evidence, the defendant must move for a new trial in the trial court. *People v Knepper*, ___ Mich App ___, ___; ___ NW2d ___ (2024) (Docket No. 363191); slip op at 5. Here, defendant did not do so, and this issue therefore is unpreserved. See *id*. We therefore review this challenge under the plain error rule, under which the defendant must demonstrate that an error occurred, that the error was clear or obvious, and that the error affected substantial rights, meaning that the error affected the outcome of the lower court proceedings. *Carines*, 460 Mich at 763. If the defendant demonstrates these three requirements, "an appellate court must exercise its discretion in deciding whether to reverse." *Id*. "Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings independent of the defendant's innocence." *Id*. at 763-764 (quotation marks omitted).

To prove that defendant was guilty of CSC-I under MCL 750.520b(1)(a), the prosecution was required to establish beyond a reasonable doubt that "(1) the defendant engaged in sexual penetration with another person and (2) the other person was under 13 years of age." *People v Lockett*, 295 Mich App 165, 187; 814 NW2d 295 (2012). " 'Sexual penetration' means sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal openings of another person's body, but emission of semen is not required." MCL 750.520a(r). In this case, defendant does not dispute that the sexual penetration occurred in three instances but disputes that LE was under the age of 13 during those instances.

1. CSC-I: DIGITAL PENETRATION

Defendant first argues that the evidence was insufficient to establish that LE was under 13 when defendant digitally penetrated her genital opening and therefore does not support his conviction of CSC-I under MCL 750.520b(1)(a) on that basis. We disagree.

By both defendant's and LE's accounts, defendant began touching LE inappropriately when she was in seventh grade and age 12.[4] LE testified that while she was in the seventh grade defendant began giving her "massages" initially over her thighs and "stomach area," over her clothing. She described how this occurred in defendant's living-room chair after school when her mother was at work and her brother was still at school.[5] LE testified that she remembered being in the seventh grade "[b]ecause that was the year I was walking home, and my brother was in — I

[4] Because LE's birthday was shortly after the end of the normal school year, her age, as expressed in nominal years, did not change during the school year.

[5] LE's mother confirmed that LE and defendant often were home alone after LE returned home from school each day while she was at work and her son was still at elementary school. Defendant confirmed during his police interview that the "massages" almost always occurred under those circumstances.

don't remember what grade, but he was still in elementary school; my mom was still working at [name of school]."

Defendant's statements to the police comported with LE's recollections. He stated that the activities at issue started when LE was 12 or 13, and also that, "in the very beginning," he "massaged" LE's back and "butt" over her clothing when LE was in seventh grade. They were less certain of their recollections and diverged regarding when the over-the-clothing massages escalated to under-the-clothing touching, rubbing, and eventually digital penetration. LE testified that "he started touching me more and in more places with more things as the years went on," including "[m]y breasts and my private areas" both over and under her clothing. She described defendant's touching her front area on "the outside and like the flaps," both "the top of the flaps, inside the flaps," while "moving" his hand "in like a circular motion" with his penis sometimes touching "the outside areas and like in between the flaps," while he "would move it with his hips or with his hands" when their clothing was off.[6] She elaborated as follows:

> So multiple times in the school week, nothing really ever happened on the weekend, but multiple times in the school week, he would call me up on his chair. Then it would kind of be the same thing every time. He would start rubbing my legs, rub my butt, and then move like inside my clothing. Most of the time he would take off my pants, my pants and underwear and start rubbing me. Some days he would take his penis out, some days he wouldn't. And then, they almost always ended with me having an orgasm.

LE admitted that she had difficulty recalling the chronology of these events, explaining that "the ones in the living room, they all kind of blur together." She further testified:

> *Q*. [Y]ou talked about his hand touching under the clothes. Do you remember this happening—do you remember when that first happened?
>
> *A*. It happened when I was in seventh grade . . . I think it was in the winter, but I'm not 100 percent sure.
>
> *Q*. And, what helps you remember it was in the seventh grade?
>
> *A*. Because of—like when I was walking home, like what I was in and just like I remember it started in seventh grade because it got worse by the time I was in eighth grade.

LE described the "one time" defendant's finger intruded slightly into her vagina as follows:

[6] Defendant was not charged with CSC-I on the basis of penile-vaginal penetration.

Q. [Y]ou talked about your private part and you talked about the Defendant rubbing his fingers in between the flaps. Did his fingers ever touch part of your vagina?

A. One time it went like slightly in the hole.

Q. Okay. And when you say it went slightly in the hole, what is . . . it you're talking about, just so we're clear?

A. His finger.

Q. And, do you recall what room this happened in?

A. It was in the chair, I think.

Q. Would that have been—in the beginning you kind of talked about some of the chair incidences when things in the beginning, or would that have happened later on?

A. I think it was in later seventh grade.

Q. You said later—

A. Yes.

Q. —what grade?

A. In seventh grade.

Defendant also expressed general uncertainty in his statements to the police about when his sexual contact with his daughter escalated to digital penetration. He recalled his touching progressing to LE's legs and thighs while LE was naked. Defendant stated that he realized he was "crossing a line" when he noticed that while "rubbing like her legs or her thighs . . . she was . . . kind of getting aroused," referring to an occasion on his bed. Defendant stated that, after that incident, he knew what he was doing with LE was "wrong," and that he completely stopped such activity in the spring of LE's seventh-grade year, although he was not 100 percent certain of the timing. He then admitted that the "massages" started again while LE was in the eighth grade and progressed to touching and rubbing LE's vagina over and under her clothing and underwear.[7]

[7] In explaining when he first realized he was "crossing the line" with LE and stopped inappropriately touching LE, defendant stated, "It was before like summertime . . . I think it was in the springtime," and that nothing then happened until "well into the next school year." When asked to specify the school year, he answered that "[i]t had to have been last year." Because LE was in ninth grade at the time of defendant's police interview, "last year" must have been when LE was in the eighth grade, from which it can be reasonably inferred that the activities started in seventh grade, then stopped for a time, then resumed in eighth grade.

Consistent with LE's recollection, defendant also described the "one time" that his finger "slipped just a little bit, like it didn't even barely go in [her vagina], but it just touched to the surface of it," and pointed to the first crease of his finger to show how far it intruded.

Defendant thus recalled the digital penetrations starting in LE's eighth-grade year, when LE was age 13, while LE testified that it occurred in seventh grade when she was 12. However, the "question is not whether there was conflicting evidence, but rather whether there was evidence that the jury, sitting as the trier of fact, could choose to believe and, if it did so believe that evidence, that the evidence would justify convicting defendant." *Bailey*, 310 Mich App at 714 (quotation marks and citation omitted). A jury may draw reasonable inferences from the evidence and determine the weight of the inferences. *Oros*, 502 Mich at 239.

In this case, the jury reasonably could conclude from LE's testimony that, on at least one occasion when LE was 12 years old, defendant's finger entered her genital opening. Although LE testified that the "massages" that occurred in defendant's chair in the living room "all kind of blur together," she specifically recalled one time "in later seventh grade," when she was 12, when defendant's finger went "slightly in the hole" while she was in his chair. Although LE did not express certainty regarding this timing, the jury was free to take at face value LE's account of defendant digitally penetrating her genital opening when she was in the seventh grade.

We conclude that LE's testimony, viewed in the light most favorable to the prosecution, was sufficient to establish beyond a reasonable doubt that defendant digitally penetrated her genital opening at least once when she was under age 13 to support his conviction of CSC-I on that basis under MCL 750.520b(1)(a). Similarly, contrary to defendant's alternative argument that his conviction regarding the charge of digital penetration was contrary to the great weight of the evidence, defendant has not demonstrated that the "evidence preponderate[d] so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Anderson*, 322 Mich App at 632.

2. CSC-I: FELLATIO

Defendant next argues that the evidence was insufficient to establish that the charged act of fellatio occurred when LE was under age 13 and therefore inadequate to sustain his conviction of CSC-I under MCL 750.520b(1)(a) on that basis. We disagree.

LE testified that defendant had her put her mouth on his penis on two occasions, first in his bedroom, and a few days later in the basement bathroom. According to LE, defendant told her the first time that "he wanted to show her how to give a man oral sex" and the second time that "he just wanted to make sure [she] was doing a good job at it." LE testified that she believed those acts occurred when she was in the eighth grade and therefore when she was 13. However, defendant's statements to the police indicated that the fellatio incident occurred earlier, when LE was in the seventh grade and therefore 12. Those statements included the following:

> [*Police Detective*]: [W]as there a point specifically going back to blow jobs, that you ever—
>
> [*Defendant*]: Yes. . . . I took her—this . . . was actually *before any of the touching stuff happened*, I had asked her about the one where we were talking about

> terminology or whatever. And, I had told her, . . . "Hey," I was like, "You, you know, are you aware of what a blow job was or whatever?" And this is when . . . I told her that, I was like, "Well . . . you could know how to do this already or whatever." And, I . . . basically told her what to do and everything like that, and I had her put . . . her mouth on my penis. [Emphasis added.]

Defendant added that "she put it in her mouth, it was just a couple seconds or whatever," that she did not like it, that it happened only once, and that it occurred in the downstairs bathroom. Defendant additionally stated that "in the beginning it was about like teaching her things . . . no touching or any of that, like just teaching her," but "I probably went farther than I should have gone as far as giving her information." Defendant elaborated as follows:

> In the beginning, it was just talking, it was just words. Like, it was just me telling her specifics about sex, about specific, you know, terms, like what they meant. . . . Like . . . blow jobs, stuff like that. Like, telling her what things she might have heard from friends or other people to say. . . . I asked her if she knew what it meant. If she didn't know what it meant, . . . I told her. . . . And, that's what I started out with.[8]

Again, defendant initially stated that everything started when LE was 12 or 13 years old but that he did not know the "exact time." He later stated that LE was in the seventh grade and therefore age 12 when it started.

We conclude that a rational juror reasonably could infer from defendant's admissions that he had LE put her mouth on his penis "before any of the touching stuff happened," which occurred when LE was in seventh grade and therefore 12 years old. Although LE testified that the fellatio happened in eighth grade and therefore when she was 13 years old, we resolve all conflicts in the evidence in favor of the prosecution. See *Oros*, 512 Mich at 239. Again, the jury was free to take at face value defendant's recollection that the fellatio incident occurred "before any of the touching stuff happened," and therefore while LE was in seventh grade and 12 years old. We conclude that the evidence, viewed in the light most favorable to the prosecution, was sufficient to support defendant's conviction of CSC-I under MCL 750.720b(1)(a) on the basis of fellatio. Similarly, the jury's guilty verdict predicated on fellatio was not against the great weight of the evidence. In light of defendant's recollection that the fellatio occurred "before any of the touching stuff," defendant has not established that the "evidence preponderates so heavily against the verdict that it would be a miscarriage of justice to allow the verdict to stand." *Anderson*, 322 Mich App at 632.

[8] The police detective answered affirmatively when asked if defendant related that "the blow job discussions and him teaching her how to do a blow job, happened in the beginning, before all the stuff happened."

3. CSC-I: CUNNILINGUS

Defendant argues that the evidence was insufficient to establish that the charged penetrative act of cunnilingus occurred when LE was under 13 to sustain his conviction of CSC-I under MCL 750.520b(1)(a) on that basis. We agree.

LE testified that on one occasion defendant put his mouth on her "private area" when her clothes were off and "stuck out his tongue and then flipped it up and down" while she was on her bed. She further testified that she could not remember when this incident occurred except that it was after he had her put her mouth on his penis. Again, LE testified that the fellatio occurred when she was in the eighth grade, but defendant's own account supported the inference that it occurred when LE was in seventh grade. LE offered no estimate as to how long after the fellatio incident the cunnilingus incident occurred.

Defendant stated during his police interview that the cunnilingus incident occurred on LE's bed, and added, "I think it would have been in the past year because I know she hasn't had the bed for that long." Because LE disclosed the abuse when she was in the ninth grade, according to defendant's timeline placing the cunnilingus incident "in the past year," the evidence indicated the earliest date of occurrence as during LE's eighth-grade year, when she was 13.

"Circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of a crime. Inferences, however, may not be based on evidence that is uncertain or speculative or that raises merely a conjecture or possibility." *People v Fisher*, 193 Mich App 284, 289; 483 NW2d 452 (1992) (citations omitted). In this case, given that defendant and LE both dated the cunnilingus to LE's eighth grade year, when she was 13, it required conjecture to conclude that that incident occurred during the previous year. We therefore conclude that defendant's CSC-I conviction under MCL 750.520b(a)(1) premised on cunnilingus is not supported by the evidence.

Upon finding insufficient evidence to support a conviction, an appellate court may vacate that conviction and direct the trial court to enter a conviction of an included lesser offense, where, as here, " 'a conviction for a greater offense is reversed on grounds that affect only the greater offense.' " *People v Bearss*, 463 Mich 623, 631; 625 NW2d 10 (2001), quoting *Rutledge v United States*, 517 US 292, 306; 116 S Ct 1241; 134 L Ed 2d 419 (1996). Accordingly, we vacate defendant's CSC-I conviction on the cunnilingus charge under MCL 750.520b(1)(a) (penetration of victim under 13) and remand this case to the trial court for entry of a conviction under MCL 750.520b(1)(b) (victim 13 to 15 and related to perpetrator).

C. SENTENCING

The trial court sentenced defendant to serve 30 years to 570 months in prison for each CSC-I conviction predicated on the penetrative acts that occurred when LE was under 13. Those minimum sentences exceeded the sentencing guidelines recommendation of 135 to 225 months, and also exceeded the mandatory 25-year minimum under MCL 750.520b(2)(b). Defendant contends that the sentences are unreasonable and disproportionate because (1) the underlying circumstances of the offense were not particularly egregious, and (2) the sentences did not reflect

certain mitigating factors. Defendant also argues that the sentences impermissibly penalized him for exercising his constitutional right to trial, thereby entitling him to resentencing.

We review an out-of-guidelines sentence for reasonableness, applying an abuse of discretion standard. *People v Dixon-Bey*, 340 Mich App 292, 295; 985 NW2d 904 (2022). Similarly, we review for reasonableness an upward departure from a statutory minimum. *People v Roy*, 346 Mich App 244, 251; 12 NW3d 183 (2023).

A reasonable sentence is proportionate to the seriousness of the circumstances of both the offense and the offender. *People v Steanhouse*, 500 Mich 453, 460; 902 NW2d 327 (2017). A sentence is unreasonable, and therefore an abuse of discretion, if the trial court failed to adhere to the principle of proportionality. *People v Lampe*, 327 Mich App 104, 125-126; 933 NW2d 314 (2019). Under the principle of proportionality, the trial court "must take into account the nature of the offense and the background of the offender" to calculate a sentence "proportionate to the seriousness of the matter." *Steanhouse*, 500 Mich at 472. A trial court abuses its sentencing discretion when it imposes a sentence disproportionate to the seriousness of the circumstances of the offense and offender. *Dixon-Bey*, 340 Mich App at 296. A departure sentence is appropriate when "the guidelines do not adequately account for important factors legitimately considered at sentencing." *Id*. When determining the proportionality of a departure sentence, it is appropriate to consider "the seriousness of the offense, factors not accounted for by the guidelines, such as the prior relationship between the victim and the defendant, a lack of remorse or a low potential for rehabilitation, and factors accounted for by the guidelines but given inadequate weight under the circumstances." *Id*.

1. EGREGIOUS CIRCUMSTANCES

Defendant argues that his case is "without circumstances that are particularly unusual or uncommon from other CSC-I offenses" or "particularly bad on the spectrum of CSC-I's" to warrant a departure from the mandatory 25-year minimum. We disagree.

"Legislatively mandated sentences are presumptively proportional and presumptively valid." *People v Brown*, 294 Mich App 377, 390; 811 NW2d 531 (2011).

> [T]he graduated system of punishment adopted by the Legislature demonstrates a careful consideration and balancing of the age of the victim and the nature of the sexual conduct. The fact that the Legislature adopted harsher punishment for those crimes involving penetration of a victim under the age of 13, even for a first-time offense, indicates that such crimes are indeed grave. [*Id*. at 390-391 (citation and footnote omitted).]

In this case, the trial court focused on the egregious circumstances underlying defendant's offenses, characterizing defendant's sexual abuse of his own young daughter as "vile," "disgusting," and "absolutely one of the worst cases" that had come to the trial court's attention. The record supports the trial court's finding that defendant's conduct was particularly egregious. For over two years, LE endured serious and multiple acts of sexual abuse at the hands of her father, who perpetrated the abuse in the victim's own home, which should be a place of comfort and

safety. In doing so, defendant employed disturbing deception and emotional manipulation of LE, who should have been able to rely on and have "utmost faith and trust in," her father.

Defendant's serial sexual abuse of his own daughter and the accompanying manipulation and deception, as the trial court pointed out, do not exist in all CSC-I cases and are appropriate factors warranting an upward sentencing departure. See *People v Smith*, 482 Mich 292, 301, 310; 754 NW2d 284 (2008) (the serial abuse of a victim over a long period is an appropriate consideration); *People v Sabin (On Second Remand)*, 242 Mich App 656, 662-663; 620 NW2d 19 (2000) (the "defendant's rape of his own minor child represents one of the most egregious forms of the crime of first-degree criminal sexual conduct"). We conclude that in this case, the trial court did not abuse its discretion by determining that the guidelines scoring did not adequately account for the gravity and extent of the sexual abuse defendant perpetrated against his daughter, and his underlying repeated and disturbing manipulation.

2. MITIGATING FACTORS

Defendant argues that the trial court failed to consider certain "mitigating factors" when imposing his sentence, particularly his rehabilitative potential, as evidenced by his confession to the police and acknowledgment that his conduct was wrong, and his status as a Marine veteran suffering from post-traumatic stress disorder. We disagree.

That the trial court did not explicitly address these mitigating factors on the record does not mean that the court was not aware of them or failed to take them into account. Trial courts "are not required to expressly or explicitly consider mitigating factors at sentencing." *People v Bailey*, 330 Mich App 41, 63; 944 NW2d 370 (2019). Here, defense counsel raised these factors at the sentencing hearing as a reason not to exceed the statutory 25-year minimum, and we note that the presentence investigation report also referred to them. Accordingly, the record does not support defendant's assertion that the trial court entirely overlooked them.

Moreover, defendant has not explained why consideration of those factors should have compelled lesser sentences. Regarding defendant's rehabilitative potential, although defendant's admission that his conduct was wrong suggests some acceptance of responsibility, the record nonetheless indicates that defendant's rehabilitative potential was questionable at best. LE testified that at times defendant told her that "this is wrong and he needed to stop." And defendant described to the police how he initially stopped the "massages" in the spring of LE's seventh grade year after he realized that what he was doing was wrong (presumably coinciding with LE's mother being at home more frequently during the summer), but admitted that he resumed, and escalated, those activities during her eighth-grade year (presumably when LE's mother's teaching job resumed), and similarly again resuming during LE's ninth-grade year after a brief pause. This record thus indicates that, despite acknowledging the wrongfulness of his conduct, he continued to abuse his daughter when not being observed. Regarding defendant's military service and mental illness, defendant does not explain how those considerations are relevant to the proportionality determination in this case involving his long-term sexual abuse of his daughter.

3. IMPERMISSIBLE FACTOR

Defendant argues that the trial court when sentencing him impermissibly penalized him for exercising his right to trial. We disagree.

A court cannot base a sentence on the defendant's refusal to admit guilt, nor can a court punish a defendant for exercising his right to trial. *People v Gonzalez*, 515 Mich 918, 918-919 (2024). Accordingly, a sentence "based, at least in part, on [his or] her refusal to admit guilt and [his or] her insistence on proceeding with trial" is erroneous and requires resentencing. *Id*. at 919. In this case, the trial court during sentencing admonished defendant as follows:

> And, if it does not come through the transcript that a Court of Appeals will have to review, I'm telling them, that is what I heard, not only from the testimony of that very strong complainant, but as indicated by your own admission. And, you know what the admission was, and you knew what the criteria's gonna be. And, I think there was no question that you were gonna get convicted and yet you still forced that girl to go through that trial. You have every right to do that, but I have every right to consider the impact that that has upon the complainant in a case.

We disagree that the trial court's statement indicates that defendant was penalized for exercising his right to trial. The trial court acknowledged that defendant constitutionally was entitled to proceed to trial, even in the face of the overwhelming evidence of his guilt, which included his explicit confession to the abuse of which he stood accused. Rather, the trial court explicitly considered several appropriate factors supporting its sentencing decision, including the nature and extent of the sexual abuse defendant perpetrated, that LE was his own daughter, that he manipulated and deceived her for more than two years, and that the abuse occurred in her own home, which should have been a place of safety and refuge for the child. Because the trial court based defendant's sentence upon permitted considerations, the trial court did not abuse its discretion.

We vacate defendant's CSC-I conviction under MCL 750.520b(1)(a) (victim under 13) premised on cunnilingus and the sentence for that conviction and remand this case to the trial court for entry of a conviction in its place under MCL 750.520b(1)(b) (victim 13 to 15 and related to perpetrator) and a corresponding sentence. Defendant's other convictions and sentences are affirmed. We do not retain jurisdiction.

/s/ Michael F. Gadola
/s/ Michael J. Riordan
/s/ Brock A. Swartzle