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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee, v ROLAND JOSEPH BOURGEOIS, Defendant-Appellant.	UNPUBLISHED November 18, 2026 9:06 AM No. 375436 Clare Circuit Court LC No. 2023-007273-FC

Before: O'BRIEN, P.J., and CAMERON and MALDONADO, JJ.

PER CURIAM.

Defendant appeals as of right his jury-trial convictions of two counts of second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(a) (victim under 13 years old, defendant greater than 17 years old). We affirm.

I. BACKGROUND

Defendant, the victim's great uncle, moved in with the victim's family when the victim was 10 years old. The victim testified that, after defendant moved in, she would spend time alone with defendant in his bedroom, where he would allow the victim to play on his phone. After some time, defendant began conditioning the use of his phone on the victim's kissing defendant on the lips and allowing him to put his tongue in her ear. This behavior escalated to defendant touching the victim's chest, including on her nipples and breast area, both over and under her clothing. Defendant also had the victim touch his erect penis over his clothing.

Several years after defendant moved out of the home, the victim disclosed defendant's abuse to a school counselor. This led to a police investigation, and defendant's arrest. Defendant's case eventually proceeded to a two-day jury trial.

At some point during the first day of the trial, a juror came forward and disclosed that she knew the victim's family. Upon questioning, the juror explained that she did not recognize any witnesses' names during voir dire, but upon seeing the victim and hearing the names of the victim's siblings, the juror realized that she knew the victim's siblings and likely the victim. The juror recounted how she said as much under her breath, and another juror overheard and instructed the

first juror to speak with the bailiff. The first juror did so, and the bailiff brought the issue to the trial court's attention. The juror told the court and the parties that she said nothing else to the other jurors after stating that she thought she knew the victim.

Defense counsel was permitted to ask questions of the juror and declined, leaving the remedy to the trial court. The trial court concluded that the proper remedy was for the juror to be excused and for trial to continue.

Defendant was then convicted and sentenced. This appeal followed.

II. JUROR MISCONDUCT

Defendant first argues that his right to a fair trial was violated and he was denied the effective assistance of counsel when a juror was empaneled who knew the victim and the victim's family, and neither the trial court nor defendant's trial counsel inquired into the specifics of the juror's misconduct.

At the heart of defendant's argument for this issue is his concern about what the excused juror may have told the other jurors that could have influenced the jury's deliberations. In *People v Budzyn*, 456 Mich 77, 88; 566 NW2d 229 (1997), our Supreme Court explained that the defendant bears the initial burden of establishing that a jury was subject to improper extrinsic influence, stating:

> In order to establish that the extrinsic influence was error requiring reversal, the defendant must initially prove two points. First, the defendant must prove that the jury was exposed to extraneous influences. Second, the defendant must establish that these extraneous influences created a real and substantial possibility that they could have affected the jury's verdict. [Citations omitted.]

Defendant cannot meet this burden here because he concedes that it is not possible to discern from the record what the dismissed juror may have communicated to the rest of the jury. Defendant contends that the lack of record, itself, supports his claims because it shows that the trial court did not sufficiently investigate the issue and that his trial counsel was ineffective for not asking the juror questions on the issue. Fatal to this argument is the fact that the juror placed on the record that she did not discuss anything with other jurors besides mentioning that she may know the victim, as shown in the following exchange with the prosecutor:

> *Prosecutor*: So, it was just—you said, [the] comment under your breath?
>
> *Juror*: Yup.
>
> *Prosecutor*: And that was it?
>
> *Juror*: Yeah. I was like, oh man, I think I know the victim.
>
> *Prosecutor*: Okay. And then that juror encouraged you to tell—
>
> *Juror*: Yeah.

Prosecutor: —one of the bailiffs?

Juror: Yeah.

Prosecutor: And you did that immediately?

Juror: Yup.

Prosecutor: Okay. And were there any other discussions?

Juror: Nope.

Prosecutor: Okay. Thank you.

This exchange establishes that the excused juror did not share any improper information with the other jurors, so there was no need for the trial court or defendant's trial counsel to probe the issue further. Defendant's claim of juror misconduct and his attendant ineffective-assistance claim are therefore without merit.

III. SUFFICIENCY OF THE EVIDENCE

Defendant also argues that his convictions were not supported by sufficient evidence. A challenge to the sufficiency of the evidence is reviewed de novo. *People v Henry*, 315 Mich App 130, 135-36; 889 NW2d 1 (2016).

When considering a sufficiency-of-the-evidence claim, this Court views the evidence in the light most favorable to the prosecution to "determine whether any rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt." *People v Lowrey*, 342 Mich App 99, 122; 993 NW2d 62 (2022) (quotation marks and citation omitted). Viewing the evidence in the light most favorable to the prosecution includes drawing "all reasonable inferences and [making] credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000).

Defendant was convicted of two counts of CSC-II under MCL 750.520c(1)(a), which provides in relevant part:

> (1) A person is guilty of criminal sexual conduct in the second degree if the person engages in sexual contact with another person and if any of the following circumstances exists:
>
> (a) That other person is under 13 years of age.

"Sexual contact" is defined as contact that:

> includes the intentional touching of the victim's or actor's intimate parts or the intentional touching of the clothing covering the immediate area of the victim's or actor's intimate parts, if that intentional touching can reasonably be construed as

> being for the purpose of sexual arousal or gratification, done for a sexual purpose, or in a sexual manner . . . . [MCL 750.520a(q).]

"Intimate parts" include a person's "genital area, groin, inner thigh, buttock, or breast." MCL 750.520a(f).

There is no dispute that, at the time of the offense, the victim was less than 13 years old and defendant was more than 17 years old. The only serious point of dispute is whether defendant engaged in sexual contact with the victim, i.e., whether there was (1) intentional touching, (2) of intimate parts, (3) that can reasonably be construed as being for a sexual purpose.

The victim's testimony described how (1) defendant intentionally touched her breast for defendant's sexual arousal and (2) defendant had the victim touch defendant's erect penis over his clothing for sexual gratification. Crediting this testimony, see *Nowack*, 462 Mich at 399-400, an objective trier of fact could find beyond a reasonable doubt that defendant committed two counts of CSC-II. See MCL 750.520h (stating that the testimony of a victim of CSC-II under MCL 750.520c "need not be corroborated").

Defendant on appeal argues that the jury should not have credited the victim's testimony because it conflicted with the testimony of other witnesses on certain points, and there was "no additional medical, scientific, or eyewitness testimony" to corroborate the victim's allegations. This argument is misplaced. The standards for reviewing a challenge to the sufficiency of the evidence are the same for reviewing a motion for a directed verdict, see *People v Thurmond*, 348 Mich App 715, 722; 20 NW3d 311 (2023), and "it is not permissible for a trial court to determine the credibility of witnesses in deciding a motion for a directed verdict of acquittal, no matter how inconsistent or vague that testimony might be," *People v Mehall*, 454 Mich 1, 6; 557 NW2d 110 (1997). By extension, it is not permissible for a court to determine the credibility of witnesses in deciding whether the evidence was sufficient to support a defendant's conviction, "no matter how inconsistent or vague that testimony might be." *Id*. That appellate courts do not assess witness credibility in the context of a challenge to the sufficiency of the evidence is well established. See, e.g., *People v Solloway*, 316 Mich App 174, 181-182; 891 NW2d 255 (2016); *People v Baskerville*, 333 Mich App 276, 283; 963 NW2d 620 (2020). If a defendant seeks to challenge a conviction on grounds that a witness's testimony was incredible, then the defendant should raise a great-weight-of-the-evidence challenge. See *People v Lemmon*, 456 Mich 625, 636; 576 NW2d 129 (1998). Accordingly, even if defendant's attacks on the victim's credibility had merit (which they do not), we would still reject his sufficiency-of-the-evidence claim.

Affirmed.

/s/ Colleen A. O'Brien
/s/ Thomas C. Cameron
/s/ Allie Greenleaf Maldonado