

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLAUDE WILLIAM GOLBECK,

Defendant-Appellant.

UNPUBLISHED

June 29, 2006

No. 261607

Tuscola Circuit Court

LC No. 04-009041-FH

Before: Davis, P.J., and Sawyer and Schuette, JJ

PER CURIAM.

Defendant was convicted by a jury of 12 counts of criminal sexual conduct in the second degree (CSC II), MCL 750.520c, and four counts of criminal sexual conduct in the fourth degree (CSC IV), MCL 750.520e. The trial court sentenced defendant to serve concurrent terms of imprisonment of three years, four months to 15 years for each CSC II conviction, and one year, two months to two years for each CSC IV conviction. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument in accordance with MCR 7.214(E).

I. FACTS

Complainant, defendant's step-daughter, was 18 years old at the time of trial. She testified that when she was nine years old, she was in the bathtub when defendant approached and started to wash her "private area," clarifying that she meant "[m]y vagina area and my buttock". Complainant continued that defendant thereafter repeatedly would touch her in inappropriate places, meaning private areas, including her breasts and vaginal area. Complainant described several such incidents which continued until she complained to authorities in 2000.

Complainant admitted initially recanting her accusations, under pressure from her mother, but testified that, about a year afterward, defendant resumed his improper contacts. Complainant specified that, when she was 16 or 17 years old, defendant repeatedly touched her in her private areas, breasts and vagina, in the bathroom, car, or her bedroom. Complainant again complained to the authorities in 2003, prompting the instant investigation, trial, and convictions.

During trial, a Children's Protective Services Worker who became involved with this case in connection with complainant's initial allegations and recantation, gave the following testimony under direct examination:

Q. . . . Is it part of your job to make findings?

A. Yes it is.

Q. Okay. Did you make findings in this case?

A. Yes I did.

Q. And what were your findings?

A. I found a preponderance of the evidence, I opened a Category III.

Q. What does that mean?

A. That means that I found that child abuse or neglect had occurred. And a Category III is our lowest category.

We have a III, II and I. And I opened a III to monitor the situation in case [complainant] had came [sic] forward again and changed her story.

There was no objection to any of this testimony at the time of trial. Defendant was found guilty of sixteen counts of criminal sexual conduct and now appeals claiming his attorney should have objected to the above testimony at trial.

II. EFFECTIVE ASSISTANCE OF COUNSEL

A. Standard of Review

The testimony in question was not objected to below and thus it has not been preserved for appeal. *People v Sean Jones (On Rehearing)*, 201 Mich App 449, 452; 506 NW2d 542 (1993). However, plain errors or defects that affect substantial rights, both constitutional and non-constitutional, may be noticed despite not being brought to the attention of the court. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). This Court must reverse only if the plain, forfeited error resulted in the conviction of an innocent defendant or when an error seriously affected the fairness, integrity or public reputation of judicial proceedings. *Id.*

B. Analysis

Defendant's counsel was not ineffective. In reviewing a defendant's claim of ineffective assistance of counsel, the reviewing court must determine whether counsel's performance was objectively unreasonable and whether the defendant was prejudiced by counsel's defective performance. *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999). A defendant pressing a claim of ineffective assistance of counsel must overcome a strong presumption that counsel's tactics were matters of sound trial strategy. *People v Henry*, 239 Mich App 140, 146; 607 NW2d 767 (1999). We will not substitute our judgment for that of counsel regarding matters of trial strategy, nor will we assess counsel's competence with the benefit of hindsight. *People v Barnett*, 163 Mich App 331, 338; 414 NW2d 378 (1987). Defendant asserts that he was denied a fair trial because the social worker opined that he had abused complainant, and that defense counsel was ineffective for failing to object to that testimony. We disagree. First, the

testimony of the social worker was admissible. Second, raising an objection to the damaging testimony in question would necessarily have drawn additional attention to it. Defense counsel's alternative strategy is apparent from the record. Counsel emphasized in cross-examination of that witness that her findings followed from a mere preponderance of the evidence, thus emphasizing that her conclusions at the time fell far below the evidentiary standard under which the jurors were to operate. Addressing the damaging testimony of the social worker through cross examination instead of by objection is a legitimate choice by counsel. The record here does not support a claim of ineffective assistance and no plain error exists.

Affirmed.

/s/ Alton T. Davis
/s/ David H. Sawyer
/s/ Bill Schuette