

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARYL RALSTON BRADLEY,

Defendant-Appellant.

UNPUBLISHED

May 23, 1997

No. 191470

Kalamazoo Circuit Court

LC No. C 95-0613-FH

Before: Young, P.J., and Doctoroff and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of third-degree criminal sexual conduct (CSC), MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). Defendant was sentenced to 2¼ to 15 years' imprisonment. We affirm.

I

Defendant first argues on appeal that he is entitled to a new trial because the lower court erred in allowing the prosecutor to use a peremptory challenge to purposely excuse a prospective juror because the juror was black. However, in presenting his argument before this Court, defendant failed to order and provide the transcripts of the voir dire proceedings, and consequently, the necessary facts from which an accurate judgment of the propriety of his argument could not be determined. This Court has no knowledge or evidence concerning the racial makeup of the jury panel, the questions asked of the prospective jurors, the responses to those questions, the name or identity of the juror allegedly dismissed due to his race, defendant's objection to the dismissal, the prosecutor's reason for exercising his peremptory challenge to remove the juror, nor the lower court's determination, all of which are important in resolving the issue of purposeful discrimination now raised by defendant. See *Batson v Kentucky*, 476 US 79; 106 S Ct 1712; 90 L Ed 2d (1986); *People v Barker*, 179 Mich App 702, 705-707; 446 NW2d 549 (1989). Defendant having failed to provide such evidence, we conclude that the issue has been abandoned or forfeited. *People v Anderson*, 209 Mich App 527, 535; 531 NW2d 780 (1995); MCR 7.210(B)(1)(a).

II

Defendant next argues that his conviction was not supported by sufficient evidence, noting that the victim's testimony was riddled with inconsistencies, that there was no evidence of force or coercion, and that there was no physical or medical evidence to substantiate the victim's claims. We disagree.

In reviewing a sufficiency of the evidence question, this Court reviews the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could conclude that the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515, modified 441 Mich 1201; 489 NW2d 748 (1992). "Inherent in the task of considering the proofs in the light most favorable to the prosecution is the necessity to avoid a weighing of the proofs or a determination whether testimony favorable to the prosecution is to be believed. All such concerns are to be resolved in favor of the prosecution." *People v Herbert*, 444 Mich 466, 474; 511 NW2d 654 (1993). In addition, when deciding this issue, this Court will not interfere with the jury's role of determining the weight of the evidence or the credibility of the witnesses. *Wolfe, supra*, 514.

In the present case, defendant was convicted of one count of third-degree CSC, contrary to MCL 750.520d(1)(b); MSA 28.788(4)(1)(b), which requires a showing that defendant used force or coercion to accomplish the sexual penetration of another. "Force or coercion" includes, but is not limited to, circumstances in which the defendant overcomes the victim through the actual application of physical force or physical violence, or when the defendant coerces the victim to submit by threatening to use force or violence on the victim, and the victim believes that the actor has the present ability to execute those threats. MCL 750.520b(1)(f)(i) and (ii); MSA 28.788(2)(1)(f)(i) and (ii). Moreover, Michigan law does not require a CSC victim to resist or present evidence of injury in order to demonstrate force, MCL 750.520i; MSA 28.788(9), nor provide any evidence to corroborate her testimony at trial, MCL 750.520h; MSA 28.788(8).

The evidence presented at trial indicates that defendant picked up the victim and carried her into his bedroom after she tried to get around him in the hallway, that once in the bedroom he shut the door behind him, and that he continued to set her back down on the bed whenever she tried to get up and leave the room. The victim stated that defendant refused to let her return to the living room, explaining that he pulled her down onto the bed and at one point sat on top of her, applying his full weight. Defendant then told the victim that they were either going to have sexual intercourse, or she was going to perform fellatio before he would allow her to leave. He then removed her clothes then penetrated her vagina. The victim indicated that she made many unsuccessful attempts to free herself from defendant and had started crying because she was scared. Finally, the victim stated that defendant forced her to have sex against her will, and noted that at one point defendant put his hand over her mouth and threatened to hurt her if she did not shut up and stop crying. We find that this evidence is sufficient to satisfy the elements required to convict defendant of the crime charged.

III

Last, defendant argues that the district court judge erred in taking judicial notice of the fact that the alleged sexual assault took place in Oshtemo Township, Kalamazoo County, and thereafter binding him over for trial. Rather than asserting that the crime did not occur in Kalamazoo County and that that venue was therefore improper, defendant instead found fault only with the fact that the judge erred when injecting his personal knowledge of the location of defendant's apartment, the place where the sexual assault occurred. We again disagree.

The jurisdiction of the trial court is restricted to the trial of persons charged with the commission of offenses in that county, except in cases where there has been a change in venue. *People v Plautz*, 28 Mich App 621, 623; 184 NW2d 761 (1970). Here, a felony complaint was filed in the Kalamazoo District Court alleging that defendant committed the crime of third-degree CSC on or about March 22, 1995 in Oshtemo Township, Kalamazoo County, and indicated that defendant resided at 670 South Drake in Kalamazoo. At the preliminary examination, although the victim was uncertain about in which one of two apartment complexes defendant lived, she explained that both complexes sat side-by-side, and stated that the incident occurred while she was at defendant's apartment on Drake Road in Kalamazoo County.

However, because the victim did not specifically know whether defendant's apartment was located within Oshtemo Township, the prosecutor asked that the court take judicial notice of the fact that both apartment complexes identified by the victim were situated on the west side of Drake Road in Oshtemo Township, Kalamazoo County. Although we find that it was not necessary, considering that the victim had already established that the alleged crime took place in Kalamazoo County and venue was therefore correct, we nonetheless conclude that the district court judge did not err in taking judicial notice of the locale of the crime, because that fact was "capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." MRE 201(b).

Affirmed.

/s/ Robert P. Young, Jr.
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh