

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK REX SIMMONS,

Defendant-Appellant.

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UNPUBLISHED

April 28, 2000

No. 215974

Calhoun Circuit Court

LC No. 98-001633-FC

Before: Owens, P.J., and Murphy and White, JJ.

PER CURIAM.

Defendant was convicted by a jury of two counts of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), kidnapping, MCL 750.349; MSA 28.581, and unlawfully driving away an automobile, MCL 750.413; MSA 28.645. He was sentenced to concurrent terms of twenty to forty years for each conviction of criminal sexual conduct, eight to fifteen years for kidnapping, and 230 days' jail for unlawfully driving away an automobile. A consecutive sentence of five to twenty years was also imposed for his conviction of home invasion. Defendant appeals as of right and we affirm.

I

Defendant first argues that the trial court erred reversibly by allowing, over his objection, testimony of the examining nurse relating the victim's account of the sexual assault and identifying defendant as the perpetrator. We disagree.

Although hearsay is generally not admissible, MRE 803(4), the medical treatment exception, permits the admission of statements made for purposes of medical treatment or diagnosis that "describe medical history, past or present symptoms, pain or sensations, or the inception or general character of the cause or external source" of any injury. The rationale supporting the admissibility of such statements is grounded in the declarant's self-interest to speak the truth to treating physicians in order to receive proper medical care, and the reasonable necessity of such statements to the diagnosis and treatment of the patient. *People v Meeboer (After Remand)*, 439 Mich 310, 322; 484 NW2d 621 (1992).

On appeal, defendant argues that although portions of the disputed testimony were properly admissible under MRE 803(4), much of the testimony included statements that were unrelated to medical treatment or diagnosis and thus inadmissible under the exception.

With respect to identification of defendant as the attacker, even assuming that it was error to admit the victim's out-court-statement identifying defendant as the assailant, such error was harmless because defendant's identification was not at issue. See *People v Zysk*, 149 Mich App 452, 458; 386 NW2d 213 (1986).

As for the remainder of the testimony, some of the information elicited from the victim was in fact necessary to the nurse's diagnosis and treatment of the victim. At trial, the examining nurse explained that her responsibilities included examining the victim to determine whether, as a result of the assault, that person will require medical attention and if so, administering the proper treatment and medications herself or referring the victim to a physician for more extensive treatment. She further explained that information from the victim concerning what happened allows her to structure the physical examination in a manner appropriate to the assault suffered. By doing so, she is able to more effectively treat a victim of sexual assault. On the other hand, in relating the history given by the victim, the nurse also repeated information that was unrelated to the victim's need for treatment. However, we find that in light of the testimony offered by the victim at trial, any error in the admission of this testimony was harmless. *People v McElhaney*, 215 Mich App 269,283; 545 NW2d 18 (1996); *People v Van Tassel*, 197 Mich App 653, 655; 496 NW2d 388 (1992). It is unlikely that the jury would have come to a different verdict had the nurse's testimony regarding the victim's history been limited in accordance with MRE 803(4). *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Defendant also argues that the trial court abused its discretion in allowing the examining nurse to offer testimony concerning her lack of any findings which were inconsistent with the history given to her by the victim just before physical examination. According to defendant, such testimony amounted to impermissible vouching for the truthfulness of the allegations of assault made by the victim. See *People v Beckley*, 434 Mich 691, 728-729; 456 NW2d 391 (1990). As a factual matter, we disagree. Contrary to defendant's assertions, the disputed testimony did not amount to an expert conclusion regarding the truthfulness of the victim's allegations, but was merely a statement indicating a lack of any physical evidence which would discount the version of events offered by the victim during examination. Further, any error would be harmless in the context of the entire trial. *Lukity, supra*.

## II

Defendant next challenges the sufficiency of evidence supporting his kidnapping conviction. When determining whether sufficient evidence has been presented to sustain a conviction, a court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proved beyond a reasonable doubt. *People v Godbold*, 230 Mich App 508, 522; 585 NW2d 13 (1998). "A person can be convicted of kidnapping if it is proved beyond a reasonable doubt that the person wilfully, maliciously, and without lawful authority forcibly or secretly confined or imprisoned any other person within this state against the other person's will." *People v Warren*, 228 Mich App 336, 343; 578 NW2d 692 (1998); see also

MCL 750.349; MSA 28.581. In this case, defendant was charged with secretly confining the victim. Defendant argues that because the confinement is alleged to have taken place in the victim's own home, the required element of secrecy was absent, and thus his conviction is invalid. We disagree.

In *People v Jaffray*, 445 Mich 287, 309; 519 NW2d 108 (1994), our Supreme Court stated that although the determination whether confinement was secret must be made upon consideration of the totality of the circumstances, the essence of a kidnapping charge premised on secret confinement, "is deprivation of the assistance of others by virtue of the victim's inability to communicate his [or her] predicament." *Id.*

Here, the victim testified that after forcibly entering her home, defendant physically and sexually assaulted her, and that following these assaults, defendant collected the telephones and forced the victim to sit near him. When the victim did move about, defendant followed her everywhere she went. According to the victim, as defendant removed the telephones, he stated that he was doing so "just in case" she got any ideas about calling the police. Defendant refused to allow the victim to leave at her request.

Because the totality of the circumstances adequately supported a finding that the victim was "deprived of the ability to communicate her plight," we concluded that the evidence was sufficient to establish that the victim was secretly confined within the meaning of the kidnapping statute.

Affirmed.

/s/ Donald S. Owens  
/s/ William B. Murphy  
/s/ Helene N. White