

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFFREY WILSON,

Defendant-Appellant.

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UNPUBLISHED

May 4, 2001

No. 220407

Oakland Circuit Court

LC No. 99-164579-FC

Before: Markey, P.J., and Jansen and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). He was subsequently sentenced, as a fourth habitual offender, MCL 769.12; MSA 28.1084, to ten to twenty-five years' imprisonment. He appeals as of right and we affirm.

Defendant's sole argument on appeal is that his conviction should be reversed because the trial court erred by permitting the complainant's examining physician to testify in such a manner that defendant claims improperly bolstered the complainant's credibility.<sup>1</sup> A trial court's

<sup>1</sup> We set forth the challenged testimony here:

Q. Doctor, if I can ask you, is there anything about this patient as she presented to you in the manner that you've described here in the course of your testimony that was consistent with a person having had a consensual sexual encounter?

[DEFENSE COUNSEL]: Judge, I'm going to object to that. That calls for speculation unless he's talking medically or internally or something like that. Otherwise it would be pure speculation. There's no expertise on that.

THE COURT: You looking to ask the opposite.

Q. (By [the prosecutor], continuing): Then that was inconsistent with a consensual sexual encounter?

A. Inconsistent?

(continued...)

decision to admit evidence is reviewed for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). Whether a rule of evidence permits or prohibits admissibility of the evidence, however, is a question of law that is reviewed de novo. *Id.*

The admissibility of expert testimony is addressed in MRE 702, which provides:

If the court determines that recognized scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.

Expert opinion testimony need not be excluded merely because it concerns the ultimate issue to be decided by the jury. *People v Smith*, 425 Mich 98, 106; 387 NW2d 814 (1986), citing MRE 704; *People v Ray*, 191 Mich App 706, 707; 479 NW2d 1 (1991). Generally, the expert's testimony must assist the jury in its understanding of the evidence or the factual issues and the expert must have sufficient qualifications to make it appear that the expert's opinion will probably aid the trier of fact in its search for the truth. *Smith, supra*, p 106. With regard to the question of whether the testimony will aid the trier of fact, our Supreme Court has stated:

[T]he examining physician in a rape case is a proper witness as long as his testimony may assist the jury in their determination of the existence of either of

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(...continued)

Q. Yes.

A. (No response)

Q. Rephrase the question then. Did you draw an observation or conclusion based on your training and experience with regard to --

A. Yes sir, I did.

Q. -- to the contact that [the complainant] claimed that she had with a person in this case?

A. Yes sir, I did.

[Defense counsel]: I'm going to object if he answers further, your Honor. Is there a medical conclusion that he came to based on a medical examination or did he just draw a conclusion based on her physical appearance?

Q. (By [the prosecutor], continuing): If you can, Doctor, can you answer that question?

A. I can conclude that this patient was traumatized, this patient did not have consensual sex.

two crucial elements of the offense charged, (1) penetration itself and (2) penetration against the will of the victim. [*People v McGillen #2*, 392 Mich 278, 284; 220 NW2d 689 (1974).]

In the present case, defendant admitted to having intercourse with the complainant, but claimed that it was consensual. The only issue was whether defendant used force against the complainant in pursuit of achieving sexual intercourse. The complainant's examining physician provided the jury with the results of his observations and examination of the complainant on the night in question, which he made as a trained emergency physician with experience in examining suspected victims of sexual assault. The doctor made no prohibited indication regarding the source of complainant's trauma or the identity of the person by whom complainant was penetrated. *People v LaPorte*, 103 Mich App 444, 453; 303 NW2d 222 (1981); *People v Wells*, 102 Mich App 558, 562; 302 NW2d 232 (1980). Nor did the doctor impermissibly testify to conclusions that he reached from his own personal opinions in the absence of medical evidence. *McGillen #2*, *supra*, pp 282-285.

The information provided by the physician was necessary and helpful to the jury in deciding the crucial issue of whether defendant used force. *People v Wilson*, 194 Mich App 599, 602; 487 NW2d 822 (1992). Therefore, the trial court did not abuse its discretion when it admitted the examining physician's challenged testimony into evidence.

Affirmed.

/s/ Jane E. Markey  
/s/ Kathleen Jansen  
/s/ Brian K. Zahra