

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN LAMARR HALL,

Defendant-Appellant.

UNPUBLISHED

June 1, 2004

No. 245139

Ingham Circuit Court

LC No. 01-077719-FC

Before: Markey, P.J., and Wilder and Meter, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction of two counts of first-degree criminal sexual conduct. MCL 750.520b. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At trial, one of the investigating police officers testified that in his last contact with defendant, defendant had declined to make a statement. Defendant did not object, and no curative instruction was given. On appeal, defendant asserts that the testimony infringed on his due process right to remain silent.

The use for impeachment purposes of a defendant's silence at the time of arrest and after receiving *Miranda* warnings can violate the Due Process Clause of the Fourteenth Amendment. *Doyle v Ohio*, 426 US 610, 619; 96 S Ct 2240; 49 L Ed 2d 91 (1976). However, the Michigan Supreme Court has held that, where there is a single impropriety, and the prosecutor does not call attention to the defendant's silence, a defendant's due process rights are not violated. *People v Dennis*, 464 Mich 567, 580; 628 NW2d 502 (2001). Here, the officer's statement was in response to an open-ended question, defendant did not object or request a curative instruction, and the prosecutor made no use of the statement in closing argument. Defendant's due process rights were not violated.

Defendant also asserts that he was denied the effective assistance of counsel. To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994). The defendant must overcome a strong presumption that counsel's actions constituted sound trial strategy. *People v Marcus Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). Second, the defendant must show

that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *People v Pickens*, 446 Mich 298, 314, 326; 521 NW2d 797 (1994).

Trial counsel was not ineffective in failing to request a DNA expert. Defendant admitted he had sexual relations with complainant. The positive DNA identification was consistent with his story. Contrary evidence would have been irrelevant.

Defendant raises additional issues in his supplemental brief; specifically, that his home was unlawfully searched and that his attorney was ineffective for failing to investigate the case. The ineffective assistance claim is without merit, as there is no showing that trial counsel committed any errors that affected the outcome of the case. Moreover, where the evidence showed that defendant gave the police his consent to search his home, a motion to suppress would not have been successful. *People v Frohriep*, 247 Mich App 692, 702-703; 637 NW2d 562 (2001).

Affirmed.

/s/ Jane E. Markey
/s/ Kurtis T. Wilder
/s/ Patrick M. Meter