

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

SHAWN CHARLES OSWALD,

Defendant-Appellee.

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UNPUBLISHED

June 1, 2004

No. 245444

Midland Circuit Court

LC No. 02-001213-FC

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

MEMORANDUM.

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

On appeal, defendant argues that the trial court abused its discretion in precluding him from offering evidence that complainant made a prior false accusation of sexual abuse in her previous marriage.

The rape-shield statute, MCL 750.520j, precludes the admission of certain evidence regarding a victim's past sexual conduct. The statute constitutes a legislative policy determination that sexual conduct as evidence of character or for impeachment, while perhaps logically relevant, is not legally relevant. *People v Hackett*, 421 Mich 338, 346; 365 NW2d 120 (1984); *People v Morse*, 231 Mich App 424, 430; 586 NW2d 555 (1998). Determination of admissibility of evidence under the statute is entrusted to the discretion of the trial court. *Id.*, 432.

In certain circumstances, evidence of a complainant's sexual conduct may be probative of a complainant's ulterior motive for making a false charge. *Hackett, supra*, 348. A defendant should be permitted to show that the complainant has made false accusations of rape in the past. *Id.* A defendant is obligated initially to make an offer of proof as to the proposed evidence and to demonstrate its relevance. *Id.*, 350.

Here, defendant made an insufficient offer of proof. The defendant must offer concrete evidence that the victim made a prior false accusation. *People v Williams*, 191 Mich App 269, 273; 477 NW2d 877 (1991). In *Williams*, this Court found that the defendant failed to offer such concrete evidence where there was no indication that criminal charges were pursued in the prior case, and no judicial determination was made as to the truth or falsity of the accusation.

A similar situation was presented in this case. The allegations of prior abuse in the first marriage were only reflected in complainant's counselor's notes. No charges were brought, and no determination was made as to the truth or falsity of the allegations. There was no concrete evidence that complainant made a false accusation, and the court properly declined to conduct a second trial to determine the truth of the prior matter. Defendant was able to present his theory that complainant brought the charges to improve her position in divorce proceedings, and he was not denied due process of law.

Affirmed.

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