

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRENDON ALLEN WALKER,

Defendant-Appellant.

UNPUBLISHED
September 9, 2004

No. 246634
Oceana Circuit Court
LC Nos. 02-003144-FH;
02-003145-FH

Before: Donofrio, P.J., and White and Talbot, JJ.

PER CURIAM.

Defendant was convicted by a jury of conspiracy to commit first-degree home invasion, MCL 750.110a(2); MCL 750.157a, and aiding and abetting an assault with intent to commit criminal sexual conduct involving penetration, MCL 750.520g. He was sentenced to concurrent terms of 106 months to thirty years in prison for the conspiracy conviction and two to fifteen years for the aiding and abetting conviction. Defendant appeals as of right, and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that he received ineffective assistance of counsel because his attorney did not move to suppress his statements to the police. He asserts that they should have been suppressed under the corpus delicti rule because, absent the statements, the evidence was insufficient to support a conviction for conspiracy to commit home invasion. We do not agree.

In *People v Williams*, 422 Mich 381, 391; 373 NW2d 567 (1985), the Supreme Court held that it is not necessary that the prosecution present independent evidence of every element of the offense before a defendant's confession may be admitted. In *People v Ish*, 252 Mich App 115, 116-117; 652 NW2d 257 (2002), this Court noted that prior opinions to the contrary had not acknowledged *Williams*, see *People v Mumford*, 171 Mich App 514; 430 NW2d 770 (1998), and *People v Uhl*, 169 Mich App 217; 425 NW2d 519 (1988). Further, the *Ish* Court stated:

The purpose of the corpus delicti rule is to prevent the use of a defendant's confession to convict him of a crime that did not occur. *People v Konrad*, 449 Mich 263, 269; 536 NW2d 517 (1995). The rule bars the prosecution from using a defendant's confession in any criminal case unless it presents direct or circumstantial evidence independent of the defendant's confession that the

specific injury or loss occurred and that some criminal agency was the source or cause of the injury. 449 Mich at 269-270; *People v Hayden*, 205 Mich App 412, 413; 522 NW2d 336 (1994); *People v Cotton*, 191 Mich App 377, 389; 478 NW2d 681 (1991). Once this showing has been made, “[a] defendant’s confession then may be used to elevate the crime to one of a higher degree or to establish aggravating circumstances.” *Id.*

There was evidence independent of defendant’s confessions to establish a specific injury caused by some criminal agency. First-degree home invasion occurs when a person enters an occupied dwelling with the intent to commit a felony. MCL 750.110a(2). Conspiracy occurs when two persons agree together to commit an offense. MCL 750.157a. Independent of defendant’s confession, the evidence established that defendant and his passenger appeared at the victim’s home at approximately 6:00 a.m., when one might expect to find her in bed. They had acquired and were wearing ski masks. The passenger made sexual comments to the victim, and defendant said “it must be nice to be rich.” While the passenger was holding the victim and pulling her to the car, defendant said that they had to get inside and he tried to open the door. After the passenger broke a glass on the victim’s head, defendant said he did not want to go that “far”, indicating he was intending to do something less drastic. This evidence sufficiently established an agreement to commit first-degree home invasion by entering the victim’s home with the intent to commit a sexual assault or a larceny.

Accordingly, the confessions were admissible, and the failure to seek their suppression was not ineffective assistance of counsel.

Affirmed.

/s/ Pat M. Donofrio
/s/ Helene N. White
/s/ Michael J. Talbot