

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE JAMES HARRIS,

Defendant-Appellant.

UNPUBLISHED

August 9, 2005

No. 253450

St. Clair Circuit Court

LC No. 03-002145-FH

Before: Whitbeck, C.J., and Sawyer and Fitzgerald, JJ.

PER CURIAM.

Defendant George Harris appeals as of right his jury convictions of two counts of third-degree criminal sexual conduct (CSC III)¹ and two counts of fourth-degree criminal sexual conduct (CSC IV).² We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

I. Basic Facts And Procedural History

Harris was charged in connection with allegations that he engaged in sexual intercourse and sexual contact with the thirteen-year-old complainant on two occasions. Before trial, Harris moved to admit evidence that complainant had made a prior false accusation that she had engaged in sexual intercourse with her stepfather. The trial court denied the motion to admit the evidence, finding that Harris failed to show that any accusation made by complainant concerning her stepfather was false.

Complainant testified that on two occasions, the first of which was on or about September 25, 2002, she engaged in sexual intercourse and other sexual contact with Harris in his van. Complainant indicated that on the first occasion, Harris was wearing his work pants. Harris testified that he did not work on September 25, 2002, and did not wear his work clothes on that date. He denied engaging in sexual intercourse or sexual contact with complainant. The jury convicted Harris of four counts of CSC.

¹ MCL 750.520d(1)(a).

² MCL 750.520e(1)(a).

II. Evidence Of Prior Accusation

A. Standard Of Review

We review the trial court's decision to admit or exclude evidence for an abuse of discretion.³

B. Complainant's Past Sexual Conduct

Harris argues that the trial court abused its discretion by denying his motion to admit evidence that complainant made a prior false accusation that she engaged in sexual intercourse with her stepfather. Evidence of a complainant's past sexual conduct with others is generally legally irrelevant and inadmissible, unless certain circumstances are met.⁴ In certain limited situations, evidence that does not come within the specific exceptions of the rape-shield statute, including evidence of prior false accusations, may be relevant and its admission may be required to protect the defendant's Sixth Amendment right of confrontation.⁵ Such evidence is admitted on a case-by-case basis to balance the rights of the complainant and the defendant,⁶ and is admitted at the discretion of the trial court.⁷ Evidence of a prior false accusation may be admitted if the defendant makes an offer of proof and can demonstrate the relevancy of the evidence.⁸ In addition, the defendant must demonstrate that the accusation was in fact false.⁹

Here, Harris showed only that complainant, when asked, stated that she engaged in sexual intercourse with her stepfather. Harris made no showing whatsoever that complainant's prior accusation was false. Under the circumstances, the trial court did not abuse its discretion by denying Harris's motion to admit evidence concerning the prior accusation.

III. Denial Of Continuance

A. Standard Of Review

The decision to grant a continuance is within the discretion of the trial court, and we review the trial court's decision to deny a continuance for an abuse of that discretion.¹⁰

³ See *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998); *People v Hackett*, 421 Mich 338, 344, 349; 365 NW2d 120 (1984).

⁴ See MCL 750.502j.

⁵ See *Hackett*, *supra* at 348.

⁶ See *People v Morse*, 231 Mich App 424, 433; 586 NW2d 555 (1998).

⁷ See *Hackett*, *supra* at 349.

⁸ See *People v Williams*, 191 Mich App 269, 273; 477 NW2d 877 (1991).

⁹ See *id.* at 274.

¹⁰ See *People v Jackson*, 467 Mich 272, 276; 650 NW2d 665 (2002).

B. Unavailable Witness

Harris argues that the trial court abused its discretion and denied him due process by refusing to grant a continuance to enable him to present the testimony of a witness who could have corroborated his assertion that he did not work on September 25, 2002. The trial court may grant an adjournment on the ground that a witness is unavailable, if the witness is material and diligent efforts have been made to produce the witness.¹¹ In this case, however, complainant was not certain that the first incident occurred on September 25, 2002. Therefore, testimony from a witness that Harris did not work on September 25, 2002 would have been only marginally relevant to the issue of complainant's credibility. Even if the witness had testified, the jury would have been entitled to believe complainant's testimony.¹² Moreover, Harris did not show that he had made a diligent effort to produce the witness prior to seeking the continuance.¹³ Accordingly, we conclude that trial court did not abuse its discretion by denying Harris's request for a continuance.¹⁴

Affirmed.

/s/ William C. Whitbeck
/s/ David H. Sawyer
/s/ E. Thomas Fitzgerald

¹¹ MCR 2.503(C)(2).

¹² See *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002).

¹³ See MCR 2.503(C)(2).

¹⁴ See *Jackson*, *supra*.