

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS MICHAEL MARTIN,

Defendant-Appellant.

UNPUBLISHED

January 10, 2008

No. 274343

Macomb Circuit Court

LC No. 2005-003437-FC

Before: Fitzgerald, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree criminal sexual conduct, MCL 750.520b(1)(a), and sentenced to 10 to 30 years in prison. He appeals by right. We affirm.

Defendant first argues that the trial court erred when it failed to instruct the jury on the defense of accident. Defendant did not request an accident instruction at trial consequently; he failed to preserve this issue. *People v Gonzalez*, 468 Mich 636, 642-643; 664 NW2d 159 (2003). Our review is limited to whether plain error affected the outcome of the lower court proceedings and resulted in the conviction of an innocent defendant or seriously affected the fairness, integrity or public reputation of the judicial proceedings independent of guilt or innocence. *Id.*; *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Accident is a defense to a specific intent crime. *People v Hess*, 214 Mich App 33, 37-38; 543 NW2d 332 (1995); CJI2d 7.3a. First-degree CSC is a general intent crime. *People v Langworthy*, 416 Mich 630, 643-645; 331 NW2d 171 (1982). The prosecutor is not required to prove that defendant had any intent “other than that evidenced by the doing of the acts constituting the offense.” *Id.* at 644. Because the defense of accident does not apply to the charge at issue, defendant has failed to establish a plain error.

Defendant next argues that the trial court erred by denying his request to admit the CPS worker’s report into evidence. We review the trial court’s decision for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). A preliminary question whether evidence is admissible under a particular rule of evidence is reviewed de novo. *Id.* An error in the admission or exclusion of evidence is not a ground for reversal unless the error involves a substantial right, and after an examination of the entire cause, it affirmatively appears that it is more probable than not that the error was outcome determinative. *Id.* at 495-496

Defendant offered the report under MRE 804(b)(7) because the witness could not be located. See MRE 804(a)(5). Apart from arguing that the report was relevant, defendant has failed to address the merits of his claim that the report met the criteria for admission under MRE 804(b)(7). Thus, he has abandoned this issue. *People v Harris*, 261 Mich App 44, 50; 680 NW2d 17 (2004). The report indicated in general that JC had recanted her allegation of sexual misconduct. Exclusion of the report did not infringe on defendant's right to present a defense: this same information was presented to the jury through the testimony of both the complainant and her mother.

We affirm.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Michael R. Smolenski