

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WANZELL ABDULLAH,

Defendant-Appellant.

UNPUBLISHED
September 16, 2010

No. 291048
Wayne Circuit Court
LC No. 08-004988-FC

Before: OWENS, P.J., and WHITBECK and FORT HOOD, JJ.

PER CURIAM.

Defendant Wanzell Abdullah appeals as of right from his jury convictions of three counts of first-degree criminal sexual conduct (CSC I);¹ armed robbery;² carjacking;³ kidnapping;⁴ three counts of third-degree criminal sexual conduct (CSC III);⁵ carrying a concealed weapon (CCW);⁶ receiving or concealing stolen property, to wit: a motor vehicle (RCSP);⁷ and possession of a firearm during the commission of a felony.⁸ We affirm.

I. BASIC FACTS

During the early morning hours of February 22, 2008, the complainant was sitting in the front passenger seat of a black Saturn; she was waiting while her cousin went into a nearby house to pick up her child from the babysitter. The complainant's cousin testified at trial that she had noticed a white minivan passing by as she was getting out of the Saturn.

¹ MCL 750.520b (multiple variables).

² MCL 750.529.

³ MCL 750.529a.

⁴ MCL 750.349.

⁵ MCL 750.520d(1)(b) (force or coercion).

⁶ MCL 750.227.

⁷ MCL 750.535(7).

⁸ MCL 750.227b.

Abdullah testified that he was the passenger in the white minivan and his codefendant, Dremel Landers, was driving. Landers remarked to Abdullah that he wanted to steal a vehicle and stopped the minivan. Landers then got out of the minivan, and Abdullah moved over to the driver's seat.

According to the complainant, as she was waiting for her cousin to return, a man (Landers) jumped into the driver's seat of the Saturn, put a gun to her head, and threatened to kill her. With the complainant still in the Saturn, Landers drove off and followed the minivan into an alley. Once in the alley, Landers got out of the Saturn and briefly spoke to Abdullah. Landers then ordered the complainant to get out of the Saturn. Landers directed the complainant to get into the back of the minivan. The complainant noticed a man sitting in the front seat, although she could not see his face. Landers then got in after her and instructed her to take off all her clothes.

Inside the minivan, Abdullah anally raped the complainant while Landers forced her to perform oral sex on him. During the rape, Landers briefly stopped to put on a condom and threatened to kill the complainant. After the threat was made, Abdullah continued to anally rape the complainant for five minutes before leaving. Once alone with the complainant, Landers also anally and vaginally raped the complainant.

The complainant testified that ten minutes after Abdullah left, a man came to the minivan and told the complainant to put on her clothes. The man then got into an argument with Landers and told Landers that he was not going to let him shoot the complainant. During the argument, the two men threatened to shoot each other. The man then walked the complainant to a nearby gas station and asked her not to tell the police that he had a gun. At trial, the gas station clerk identified Abdullah as the man who brought the complainant to the gas station. However, Abdullah left before police arrived.

Abdullah testified that, at first, he had thought that the complainant was a willing participant in the sexual encounter. However, at some point, the complainant said, "I'll do whatever just don't kill me," which, according to Abdullah, made him change how he looked at the situation, and he then left the minivan. Abdullah testified that he then returned to "rescue" the complainant.

The Saturn was equipped with OnStar, so the police were able to quickly locate both vehicles. Footprints in the snow led officers from the minivan to a nearby residence. When police approached, Landers attempted to escape through a window with a semi-automatic firearm. Inside the same residence, police found Abdullah with a nine-millimeter blue steel automatic handgun and the key fob to the Saturn.

The jury convicted Abdullah, and he now appeals.

II. ADMISSION OF LANDERS' STATEMENTS

A. STANDARD OF REVIEW

At trial, Abdullah tried to introduce Landers' statements to him, while they were standing in the alley, that the complainant was willing to have sex in exchange for money and that

everything was okay. He argues that these statements supported a finding that he was unaware that he was assisting Landers with a sexual assault. Therefore, he asserts on appeal that the trial court violated his constitutional right to present a defense by excluding these statements as inadmissible hearsay.

Although Abdullah repeatedly challenged the trial court's exclusion of Landers' statements, it was only on the basis that they were admissible under MRE 803(3). Abdullah did not challenge the trial court's decision on the ground that it violated his constitutional right to present a defense. Because an objection to evidence on one ground does not preserve appellate review on a different ground, the constitutional claim has not been preserved.⁹ Therefore, we review Abdullah's unpreserved constitutional claim that he was denied the right to present a defense for plain error that affected his substantial rights.¹⁰ As to Abdullah's preserved evidentiary claim, this Court reviews de novo whether a particular rule of evidence prevented the admission of the evidence at trial.¹¹ And this Court reviews for an abuse of discretion the trial court's ultimate decision to exclude the evidence.¹²

B. ANALYSIS

The right to present a defense is a fundamental element of due process that allows a defendant the opportunity to present his or her version of the facts to the jury.¹³ However, this right is not absolute and "[t]he accused must still comply with 'established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.'"¹⁴ Accordingly, Abdullah was required to follow the appropriate procedures when seeking to admit Landers' statement at trial.

Abdullah's brief on appeal concedes that Landers' statements were hearsay, but he nevertheless argues that they were admissible under the MRE 803(3) exception. Under this exception, "statement[s] of the declarant's then-existing state of mind, emotion, sensation, or physical condition (such as intent, plan, motive, design, mental feeling, pain, and bodily health)" can be admitted.¹⁵ A codefendant's intent can be relevant when determining whether a

⁹ *People v Asevedo*, 217 Mich App 393, 398; 551 NW2d 478 (1996).

¹⁰ *People v Carines*, 460 Mich 750, 763; 597 NW2d (1999).

¹¹ *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003).

¹² *Id.*

¹³ *Washington v Texas*, 388 US 14, 19; 87 S Ct 1920; 18 L Ed 2d 1019 (1967).

¹⁴ *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984), quoting *Chambers v Mississippi*, 410 US 284, 302; 93 S Ct 1038; 35 L Ed 2d 297 (1973).

¹⁵ MRE 803(3).

defendant was guilty as an aider and abettor.¹⁶ However, the MRE 803(3) exception only applies when *the declarant's* state of mind is at issue.¹⁷

Here, Abdullah sought to use Landers' statements to establish that Abdullah believed that the complainant had consented to sexual intercourse. However, a *victim's* subjective state of mind determines whether consent was given, not a *defendant's* belief that there was consent.¹⁸ Moreover, for the statements to be admissible under MRE 803(3), they would need to provide insight into Landers' state of mind as the declarant, not Abdullah's as the listener. That is, contrary to Abdullah's contentions, the statements were not admissible to show *his* mental state or beliefs. Accordingly, MRE 803(3) did not apply, and Landers' statements were inadmissible. Further, because Landers' statements were inadmissible, the trial court did not violate Abdullah's right to present a defense and he has failed to show plain error in the trial court's decision.

We affirm.

/s/ Donald S. Owens
/s/ William C. Whitbeck
/s/ Karen Fort Hood

¹⁶ *People v Paintman*, 92 Mich App 412, 420; 285 NW2d 206 (1979), rev'd on other grounds 412 Mich 518 (1982).

¹⁷ *People v Lucas*, 138 Mich App 212, 220; 360 NW2d 162 (1984).

¹⁸ *People v Hale*, 142 Mich App 451, 453; 370 NW2d 382 (1985).