STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 7, 2010
v	No. 291361 Kalamazoo Circuit Court
BRANDON LEE ARNOLD, Defendant-Appellant.	LC No. 2008-001325-FC

Before: O'CONNELL, P.J., and SERVITTO and SHAPIRO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of one count of first degree criminal sexual conduct, MCL 750.520b(1)(a), and one count of second-degree criminal sexual conduct, MCL 750.520c(1)(a). The trial court sentenced defendant as a 4th habitual offender, MCL 769.12, to concurrent prison terms of 20 to 45 years and 8 to 16 years and 8 months, respectively, with 170 days credit for time served. Because the challenged evidence was admissible and its admission did not affect defendant's substantial rights in any event, we affirm.

On May 28, 2008 defendant appeared at his cousin Cassandra's apartment to ask if he could stay the night. Cassandra, who resided in the same apartment complex as defendant, agreed to allow defendant to stay the night in the apartment she shared with her ex-husband and four children. The eldest of Cassandra's four children, an eleven-year-old boy, was sleeping upstairs in a room by himself while her other three children were asleep in a separate upstairs bedroom. At some point during the night, defendant carried the 11-year old downstairs and fondled his genitals and anally penetrated the boy with his penis. Cassandra heard a strange noise from downstairs and, after realizing the 11-year old was not in bed, confronted defendant about his contact with the child. Defendant was ordered to leave the apartment, and Cassandra called the police to report that defendant had sexually assaulted her child. Defendant was thereafter charged and convicted as set forth above.

On appeal, defendant first argues that testimony from one police officer that the "entire investigation" caused the police to "submit charges" against defendant, and from another officer that the police "pretty much believed that a crime had been committed" were inadmissible statements of the officers' opinions that defendant was guilty. Defendant did not object to the challenged testimony at trial; therefore, the issue is not preserved. Unpreserved claims are reviewed for "plain error" affecting substantial rights. *People v Taylor (On Remand)*, 252 Mich App 519, 523; 652 NW2d 526 (2002).

A witness opinion concerning the guilt or innocence of a criminal defendant is not admissible. *People v Moreno*, 112 Mich App 631, 635; 317 NW2d 201 (1981). The issue of an individual's guilt or innocence is a question solely for the jury. *People v Suchy*, 143 Mich App 136, 149; 371 NW2d 502 (1985).

Here, Detective Richard Mattison testified regarding his duties as the lead investigator of an alleged criminal sexual conduct case. Mattison testified that when he is assigned a case he becomes familiar with the case by interviewing witnesses, arranging for the collection and submission of evidence, interviewing suspects, and, at the end of the investigation, sending the case to the prosecutor's office if he believes there is enough for the matter to be submitted for criminal charges. Mattison further testified as to his duties in this specific matter, indicating that he completed a criminal sexual conduct kit with respect to the complaining witness, and scheduled a forensic interview with the complaining witness. The prosecutor asked if the officer put the details of the complaining witness' interview in his police report, then asked:

> And was it based on everything that you had? The interview, the evidence, even that was lacking, the statements that were given you by witnesses, your entire investigation that caused you to submit charges in this matter regarding Brandon Arnold?

Mattison simply responded, "Yes."

Clearly, the prosecutor did not ask the witness to comment on the guilt or innocence of defendant, and the detective's challenged statement concerned his involvement in the investigation and the general procedure followed—not whether he believed defendant to be guilty. Because Mattison expressed no opinion as to defendant's guilt or innocence, but merely provided evidence concerning his investigation, defendant's argument with respect to Mattison's testimony is without merit. The same holds true for defendant's challenge to Deputy Clair Sootsman's testimony.

Deputy Sootsman testified that he responded to the complaining witness' home on a report that a criminal sexual conduct occurred. Sootsman testified that upon his arrival, he made contact with the complainant, spoke to the complaining witness' mother, obtained a description of the suspect, and provided the information he received to other officers. The prosecutor asked, "As a result of talking to [the complainant's mother] what did you do?" Sootsman responded, "After I spoke with her we pretty much believed that a crime had been committed, and that our suspect was at an apartment within that complex." As with the first officer, Sootsman was clearly detailing the process of the investigation and explaining how the charges came about. The admission of the testimony did not constitute plain error.

Moreover, even if the admission of the statements was erroneous, a review of the record establishes that the error did not affect defendant's substantial rights. Under the plain error rule, reversal is only warranted if the defendant is actually innocent or the error seriously undermined the fairness, integrity, or public reputation of the trial. *People v Pipes*, 475 Mich 267, 274; 715 NW2d 290 (2006). Where, as here, the officers' testimony that they believed a crime was committed, pursued the investigation, and sought charges, was evident from all the other evidence and inferences in the case. The record does not support a finding that the challenged statements unduly influenced the jury to convict defendant. It does not appear that the evidence

had any bearing on the trial's outcome; thus, defendant has not demonstrated any plain error affecting substantial rights.

Defendant next contends that Detective Mattison's testimony that there was "an indication that it may have happened before" was inadmissible, because it was not based on the detective's personal knowledge. Again, defendant did not object to the challenged testimony at trial. As a result, we review this unpreserved claim for "plain error" affecting substantial rights. *Taylor (On Remand)*, 252 Mich App at 523.

MRE 602 provides, in relevant part:

> A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness' own testimony.

The prosecutor asked Mattison about his involvement in the investigation. Mattison testified that he conducted interviews and attempted interviews with witnesses and family members, and that "there was an indication that it may have happened prior to this incident at a different location." When asked if he was able to verify that information, Mattison indicated that he was not. The evidence that the detective questioned or tried to question others about an unsubstantiated hearsay allegation was irrelevant. MRE 401; MRE 402. In any event, the prosecutor did not ask about any other "incidents" such that Mattison's answer was unresponsive to the question asked. Given Detective Mattison's lack of personal knowledge and his inability to verify any prior incident, we agree the evidence was not admissible and its admission constituted plain error. That does not mean, however, that this error warrants reversal.

Unresponsive testimony does not require reversal if the prosecutor does not conspire with or encourage the witness to give such testimony. *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990). The record here does not reflect that the prosecutor conspired with or encouraged the testimony. Moreover, reversal is warranted only when the error was plain error that affected defendant's substantial rights. *Taylor (On Remand)*, 252 Mich App at 523. There were no details regarding the other alleged incident, and the jury was informed that the other incident was not substantiated. The information was not repeated or emphasized during the course of the trial. Although the challenged testimony was unresponsive, irrelevant, and admitted in error, on the record before this Court, we cannot conclude that defendant's substantial rights were affected.

Affirmed.

/s/ Peter D. O'Connell
/s/ Deborah A. Servitto
/s/ Douglas B. Shapiro