STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 25, 2012
v	No. 298749 Kent Circuit Court
JOSE ALBERTO VEGA, Defendant-Appellant.	LC No. 08-012557-FC

Before: HOEKSTRA, P.J., and MARKEY and BORRELLO, JJ.

PER CURIAM.

Defendant appeals by right his convictions for first-degree criminal sexual conduct, MCL 750.520b(1)(a) (person under 13). Defendant was previously tried on charges of sexual abuse relating to the victim, who was the young daughter of his former girlfriend. After the first trial ended in a hung jury, defendant was retried. Following his second jury trial, defendant was convicted on two counts of first-degree criminal sexual conduct. We affirm.

Defendant first argues that the trial court erred by allowing the prosecution to present evidence of statements he made to police officers during a custodial interrogation. Defendant preserved this challenge by filing a motion to suppress the statements. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). As he did in his motion to suppress, defendant argues that he unambiguously invoked his right to remain silent during the interview. We agree.

Criminal suspects enjoy safeguards against involuntary self-incrimination during custodial interrogations. *Michigan v Mosley*, 423 US 96, 99; 96 S Ct 321; 46 L Ed 2d 313 (1975); *Miranda v Arizona*, 384 US 436, 444-445; 86 S Ct 1602; 16 L Ed 2d 694 (1966). One of these safeguards is the right to remain silent during police interrogation and to terminate further questioning. *Mosley*, 423 US at 103-104. Law enforcement officers are required to honor a suspect's invocation of his right to silence, and "the admissibility of statements obtained after the person in custody has decided to remain silent depends . . . on whether his 'right to cut off questioning' was 'scrupulously honored.'" *Id.* at 104, quoting *Miranda*, 384 US at 474, 479. A criminal suspect may invoke his right to remain silent at any time during the interview, even if he waived his right at an earlier time. *Mosley*, 423 US at 102-104; *Miranda*, 384 US at 444-445; 473-474, 479. But to invoke the right, a defendant must unequivocally and unambiguously communicate his desire to remain silent. *Berghuis v Thompkins*, __ US __; 130 S Ct 2250, 2260; 176 L Ed 2d 1098 (2010); *People v Catey*, 135 Mich App 714, 722-726; 356 NW2d 241 (1984).

Here, the record indicates that despite waiving his *Miranda* rights at the beginning of an interview with the police, defendant unambiguously invoked his right to remain silent during the interview when he stated: "I don't talk no more. That's it. I gotta go to jail or I gotta go to prison, fine." We find defendant's statement to be an unambiguous invocation of his right to remain silent because defendant stated that he no longer wished to speak with police officers. See *Berghuis*, 130 S Ct at 2260 (a defendant can unambiguously assert his right to remain silent by simply stating that "he did not want to talk with the police.") Further, we find that the interviewing officers failed to "scrupulously honor" defendant's request as they continued to interview defendant without a break in questioning. See, e.g., *People v Williams*, 275 Mich App 194, 198; 737 NW2d 797 (2007) (noting a relevant factor in determining whether the police could resume interrogation after a suspect has invoked his right to remain silent is whether a significant time elapsed since the person invoked the right to remain silent). Thus, the statements defendant made after he invoked his right to remain silent were admitted in error. *Mosley*, 423 US at 104; *Miranda*, 384 US at 479.

Having determined that some of defendant's statements were admitted in error, our next inquiry is whether the error was harmless beyond a reasonable doubt. *People v Anderson (After Remand)*, 446 Mich 392, 405-406; 521 NW2d 538 (1994); *Chapman v California*, 386 US 18, 24; 87 S Ct 824; 17 L Ed 2d 705 (1967). We conclude the error was harmless beyond a reasonable doubt because the statements that were erroneously admitted were not incriminating. See *People v Knight*, 122 Mich App 584, 594; 333 NW2d 94 (1983) (holding an erroneously admitted statement that is not incriminating was harmless beyond a reasonable doubt). Indeed, defendant's statements did not amount to an admission of guilt. Instead, they were a refusal to admit or deny the allegations made against him. Thus, we conclude that any error that occurred was harmless beyond a reasonable doubt. Our conclusion is further bolstered because the challenged statements were cumulative to properly admitted evidence. See *People v McRunels*, 237 Mich App 168, 184-185; 603 NW2d 95 (1999) (applying the *Chapman* standard and holding that defendant's erroneously admitted statements were harmless when the statements were cumulative to properly admitted evidence). In this case, defendant initially waived his right to remain silent and agreed to speak with officers; consequently, any statements defendant made before he invoked his rights were admissible. See *People v Tierney*, 266 Mich App 687, 707; 703 NW2d 204 (2005) (an accused's voluntary custodial statements are admissible if they are obtained after a valid waiver of *Miranda* rights). At trial, defendant's admissible statements were presented to the jury before his inadmissible statements were. The inadmissible statements were cumulative to the admissible statements because in each defendant neither admitted nor denied the allegations against him. Indeed, defendant consistently refused to either admit or deny the allegations against him, both before and after he invoked his right to remain silent. Therefore, because of the similarities between the statements, we find that the inadmissible statements were cumulative to the admissible statements, and the error in admitting the statements defendant made after he invoked his right to remain silent was harmless. *McRunels*, 237 Mich App at 184-185; see also *People v Matuszak*, 263 Mich App 42, 52; 687 NW2d 342 (2004) (because the challenged evidence was cumulative to admissible evidence, any error in admitting the evidence was harmless beyond a reasonable doubt).

Next, defendant argues that trial counsel was ineffective for failing to introduce evidence of a prior inconsistent statement made by the victim. During defendant's case-in-chief, counsel asked Karen Gonzalez, a friend with whom the victim once lived, about her testimony in

defendant's first trial. In the previous trial, Gonzalez testified that during a counseling session, the victim said that defendant had never inappropriately touched her. The prosecution objected to defense counsel's question on hearsay grounds. The trial court cited MRE 801(d)(1)(A) and ruled in the prosecution's favor because the victim was not subject to cross-examination concerning her prior inconsistent statement. Despite the trial court's ruling, Gonzalez later testified that the victim told her that defendant had never been sexually abused her. This testimony was admitted without objection.

A defendant is denied effective assistance of counsel in violation of the Sixth Amendment if counsel's performance falls below an objective standard of reasonableness, and the representation so prejudiced the defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 309; 521 NW2d 797 (1994); *Strickland v Washington*, 466 US 668, 687-688; 104 S Ct 2052; 80 L Ed 2d 674 (1984). This Court presumes that trial counsel was effective. In order to show that counsel's performance fell below an objective standard of reasonableness, a defendant must overcome the strong presumption that his counsel's conduct constituted reasonable trial strategy. *Matuszak*, 263 Mich App at 58; *Strickland*, 466 US at 689. To prove prejudice, a defendant must show that there is a reasonable probability that but for counsel's unprofessional errors the trial outcome would have been different. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000); *Pickens*, 446 Mich at 312.

Defendant's argument that trial counsel was ineffective must fail. Defendant cannot show that he was prejudiced by trial counsel's failure to admit one alleged statement under the auspices of MRE 801(d)(1)(A) because the statement was cumulative to another statement the victim allegedly made, about which Gonzalez testified. Because the jury was unimpressed by Gonzalez's testimony that was admitted, it is not reasonably probable the jury would have been impressed by her testimony about a duplicate statement. See *People v Carbin*, 463 Mich 590, 603; 623 NW2d 884 (2001). Accordingly, defendant has not demonstrated a reasonable probability that if the excluded testimony had been admitted, the trial outcome would have been different. *Toma*, 462 Mich at 302-303.

Defendant next raises numerous other claims of ineffective assistance of counsel and prosecutorial misconduct. By failing to cite any case law in support of his positions, defendant has abandoned these arguments. "An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority." *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Nonetheless, we have reviewed the entire record and find defendant's arguments meritless. Accordingly, defendant is not entitled to relief on his unsupported claims.

We affirm.

/s/ Jane E. Markey
/s/ Stephen L. Borrello