

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KAMRAN J. MUKHTAR,

Defendant-Appellant.

UNPUBLISHED
December 13, 1996
AFTER REMAND

No. 193210
Marquette County
LC No. 87-021389

Before: Gribbs, P.J., and MacKenzie and Griffin, JJ.

PER CURIAM.

Defendant, who claimed he was singled out for prosecution on the basis of his nationality, appeals as of right from an order denying his motion to dismiss on the basis of selective prosecution. We affirm.

Following consensual sexual encounters with two under-aged females in 1987, defendant, a Pakistani national, was charged with two counts of third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4). He pleaded guilty to two counts of attempted third-degree CSC, MCL 750.92; MSA 28.287, MCL 750.520d; MSA 28.788(4), and was sentenced to three years' probation with the first six months to be served in jail. Following this Court's remand in *People v Mukhtar*, unpublished opinion per curiam of the Court of Appeals, issued 3/9/93 (Docket No. 139035), defendant was permitted to conduct limited discovery to determine whether individuals in similar cases had been prosecuted. The trial court subsequently found that defendant had failed to establish that he was the victim of selective prosecution.

A determination on the merits of a claim of selective prosecution is reviewed for clear error. *United States v Sammons*, 918 F2d 592, 600 (CA 6, 1990). In *United States v Peete*, 919 F2d 1168, 1176 (CA 6, 1990), the Sixth Circuit stated that a defendant alleging selective or discriminatory prosecution

bears the heavy burden of establishing, at least *prima facie*, (1) that while others similarly situated have not generally been proceeded against because of conduct of the

type forming the basis of the charge against him, he has been singled out for prosecution, *and* (2) that the government's discriminatory selection of him has been invidious or in bad faith, i.e., based upon such impermissible considerations as race, religion, or the desire to prevent the exercise of his constitutional rights.

An examination of the other cases involving statutory rape occurring during 1984 to 1987 in Marquette County reveals that United States citizens were generally prosecuted for behavior similar to that of defendant in the instant case. In fact, all the individuals prosecuted for CSC, except defendant and his codefendant, were United States citizens. Although not all individuals suspected of criminal sexual activity were prosecuted, the United States Supreme Court observed in *Wayte v United States*, 470 US 598, 607-608; 105 S Ct 1524; 84 L Ed 2d 547 (1985), that

the decision to prosecute is particularly ill-suited to judicial review. Such factors as the strength of this case, the prosecution's general deterrence value, the Government's enforcement priorities, and the case's relationship to the Government's overall enforcement plan are not readily susceptible to the kind of analysis the courts are competent to undertake.

Consequently, we find that the trial court did not clearly err when it concluded that defendant failed to show that he was the victim of selective prosecution.

Affirmed.

/s/ Roman S. Gribbs
/s/ Barbara B. MacKenzie
/s/ Richard Allen Griffin