

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SCOTT D. NATHANIEL, a/k/a NATHANIEL  
DRIVER,

Defendant-Appellant.

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UNPUBLISHED

March 1, 2002

No. 228533

Wayne Circuit Court

LC No. 00-000142

Before: Jansen, P.J., and Zahra and Meter, JJ.

PER CURIAM.

Defendant was convicted by a jury of two counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(f), and felonious assault, MCL 750.82. Defendant was sentenced to concurrent terms of twenty to fifty years' imprisonment for the CSC I convictions and two to four years' imprisonment for the felonious assault conviction. Defendant's sentences are to run consecutive to any sentence received for a prior conviction for which defendant was on parole at the time he committed the crimes in this case. We affirm.

On appeal, defendant challenges the admission of hearsay testimony. We review a trial court's decision to admit evidence for an abuse of discretion. *People v Bartlett*, 231 Mich App 139, 158; 585 NW2d 341 (1998). An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

During the prosecution's direct examination of the victim, the victim testified: "Well, the doctor, he told me that I was lucky to be alive because I could have had brain damage. And that my eyes were red from the choking. I like bust every vessel in my eye." "'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(c); *Bartlett*, *supra* at 159. Hearsay is not admissible as substantive evidence unless an exception applies. MRE 802; *People v Poole*, 444 Mich 151, 159; 506 NW2d 505 (1993).

The victim's testimony regarding the doctor's statement was hearsay because the statement was made out of court while the doctor provided medical assistance to the victim and was offered to prove the truth of the matters asserted. MRE 801(c). Further, the statement does

not fall within the hearsay exception provided by MRE 803(4) because it was a statement by the doctor, and was not made for the purpose of the victim receiving medical assistance.

Although the testimony at issue was inadmissible hearsay, we conclude that the trial court's error in admitting this evidence was harmless. Admission of the hearsay testimony did not result in a miscarriage of justice. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). The hearsay testimony was merely cumulative to other evidence regarding the nature and extent of the victim's injuries. *Bartlett, supra* at 159-160; *People v Crump*, 216 Mich App 210, 212; 549 NW2d 36 (1996). The victim testified that defendant choked her with both hands until she cut her tongue and lost consciousness, and that the blood vessels in one of her eyes ruptured due to the choking. Additionally, a police officer testified that the victim's eyes were "completely filled with blood," there were cuts on the victim's tongue, and the victim's neck was severely bruised. Moreover, the hearsay testimony was not used to establish an element of the offenses. The doctor's opinion that the victim could have died or suffered brain damage was not necessary to find defendant guilty of CSC I or felonious assault. MCL 750.520b(1)(f); MCL 750.82. There was substantial evidence that defendant choked the victim to the point of unconsciousness and forced the victim to engage in sex acts with him. Under these circumstances, admission of the challenged testimony did not result in a miscarriage of justice. *Carines, supra*.

Affirmed.

/s/ Kathleen Jansen  
/s/ Brian K. Zahra  
/s/ Patrick M. Meter