

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT SAMPSON PRINCE,

Defendant-Appellant.

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UNPUBLISHED

May 17, 2002

No. 230696

Macomb Circuit Court

LC No. 00-001146-FC

Before: Markey, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree murder (felony murder), MCL 750.316(1)(b), and first-degree criminal sexual conduct through the use of force or coercion, accompanied by personal injury to the victim, MCL 750.520b(1)(f). We affirm.

I

Defendant first argues there was insufficient evidence to sustain his first-degree criminal sexual conduct conviction because the prosecution failed to prove beyond a reasonable doubt that defendant achieved sexual penetration by the use of force. In reviewing the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find the essential elements of the crime proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). In reviewing questions of the sufficiency of the evidence, this Court should accord great deference to the jury's role of determining the weight of evidence and the credibility of witnesses. *People v Stiller*, 242 Mich App 38, 42; 617 NW2d 697 (2000).

A person violates MCL 750.520b(1)(f) if he "causes personal injury to the victim and force or coercion is used to accomplish sexual penetration." *People v Cowley*, 174 Mich App 76, 80; 435 NW2d 458 (1989). "Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime." *People v Jolly*, 442 Mich 458, 466; 502 NW2d 177 (1993). Viewing the evidence in this case in the light most favorable to the prosecution, rational jurors could find beyond a reasonable doubt that defendant accomplished the sexual penetration by overcoming the victim through the application of force. Defendant met the victim for the first time at a Mobil gas station and told her that he would show her where she could obtain cocaine. The victim was intoxicated and could not walk or talk normally.

Defendant punched the victim, knocking her to the concrete, and carried her over his shoulder to an area behind a K-Mart. Once behind the K-Mart, defendant had sexual intercourse with the victim. These facts alone provide a rational basis for concluding that defendant used force to effect sexual penetration.

The trier of fact was free to reject defendant's statements that the victim initiated the sex by hugging and kissing defendant after he punched the victim, as defendant claims, or that defendant punched her because he thought she was going to strike him. *Stiller, supra*, 242 Mich App 42. The fact that defendant told several lies throughout the course of the investigation showed that he lacked credibility and lends credence to the circumstantial evidence supporting the conclusion that defendant used force to effect sexual penetration.

Defendant argues the lack of injuries on the external genitalia belies an inference of forceful penetration. However, the testimony showed that while there were no injuries to external genitalia, there were injuries over the rest of the victim's body, including her thighs, knees, and feet. Injuries to internal genitalia would not have been detectable because the victim's body was frozen. The victim died of a crushed skull and was found dead with her pants around her ankles and her shirt around her neck. Defendant admitted that he struck the victim several times behind the K-Mart. This circumstantial evidence is sufficient to convince reasonable jurors beyond a reasonable doubt that defendant effected sexual penetration by force.

## II

Defendant next argues that the trial court erred in denying his motion to quash the first-degree criminal sexual conduct information. Defendant claims that there was insufficient evidence that he used force or coercion to commit sexual penetration. It is well settled in Michigan law that errors in the sufficiency of proofs at the preliminary examination must be considered harmless if sufficient evidence is presented at trial to convict the defendant of the charges. *People v Johnson*, 427 Mich 98, 116; 398 NW2d 219 (1986) (plurality opinion). See also, *People v Meadows*, 175 Mich App 355, 359; 437 NW2d 405 (1989) (adopting the reasoning of *Johnson, supra*). As discussed above, since sufficient evidence was presented at trial to convict defendant of first degree criminal sexual conduct in violation of MCL 750.520(b)(1)(f), any deficiency in the proofs presented at the preliminary exam was harmless.

## III

Defendant next argues that he was denied effective assistance of counsel because defense counsel failed to request standard jury instruction CJI 20.27 regarding the issue of consent to sexual intercourse by the victim. We review de novo claims of ineffective assistance of counsel. *People v Houstina*, 216 Mich App 70, 73; 549 NW2d 11 (1996). To establish ineffective assistance of counsel, a defendant must show (1) that counsel's performance was below an objective standard of reasonableness under prevailing professional norms, and (2) that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000).

Even if we were to assume there was sufficient evidence to warrant a jury instruction on the issue of consent, defendant's conviction must still stand because the failure to give the

consent instruction did not affect the outcome of the case. The evidence that defendant punched the intoxicated victim and carried her behind a K-Mart where he had sex with her, along with the evidence that the victim was found beaten to death and unclothed, strongly contradicts defendant's statement that the sex was consensual. Additionally, defendant's earlier statements to the police and his friends are at odds with defendant's later statements to the police, thus undermining defendant's credibility as it relates to all aspects of this case. *Stiller, supra*, 242 Mich App 42.

Additionally, this Court must evaluate jury instructions as a whole, rather than extract instructions piecemeal to establish error. *People v Bell*, 209 Mich App 273, 276; 530 NW2d 167 (1995). Even partially imperfect instructions do not require reversal if they fairly presented the issues to be tried and sufficiently protected the defendant's rights. *People v Davis*, 216 Mich App 47, 54; 549 NW2d 1 (1996). By stating that "the prosecutor must prove that the defendant used force or coercion to commit the sexual act," the trial court adequately informed the jury that a reasonable doubt regarding consent would mandate acquittal. For these reasons, defendant's first-degree criminal sexual conduct conviction should not be reversed based on defendant's claim of ineffective assistance of counsel.

#### IV

Defendant finally argues that the trial court erred in denying his motion to suppress his inculpatory statements to Detective Majur. This Court's review of a lower court's factual findings in a suppression hearing is limited to clear error and those findings will be affirmed unless we are left with a definite and firm conviction that a mistake was made. *People v Snider*, 239 Mich 393, 406; 608 NW2d 502 (2000). This Court reviews de novo the lower court's ruling with regard to the motion to suppress. *Id.*; *People v Garvin*, 235 Mich App 90, 96; 597 NW2d 194 (1999).

A statement made by an accused during a custodial interrogation is inadmissible unless the accused voluntarily, knowingly, and intelligently waived his or her Fifth Amendment rights. *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966). An interrogation is not "custodial" unless the questioning is initiated by law enforcement officers after the accused has been taken into custody or deprived of his or her freedom in a significant way. *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). To determine whether a defendant was in custody at the time of the interrogation we look at the totality of the circumstances, with the key question being whether the accused reasonably could have believed that he was not free to leave. *Id.* The determination of custody depends on the objective circumstances of the interrogation rather than the subjective views harbored by either the interrogating officer or person being questioned. *Id.* In this case, defendant came to the station voluntarily with his mother upon the request of police officers. During the interview he was free to leave and did, in fact, leave occasionally to speak with his mother. Based on the totality of the circumstances, defendant was not in custody or otherwise deprived of his freedom in any significant manner such that *Miranda* warnings were required. See *People v Mendez*, 225 Mich App 381; 571 NW2d 528 (1997).

Affirmed.

/s/ Jane E. Markey  
/s/ Michael J. Talbot  
/s/ Brian K. Zahra