

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LAWRENCE WILLIAMS,

Defendant-Appellant.

---

UNPUBLISHED

June 7, 2002

No. 231703

Wayne Circuit Court

LC No. 00-000718

Before: Murphy, P.J., and Jansen and Kelly, JJ.

PER CURIAM.

Defendant was charged with two counts of first-degree criminal sexual conduct, MCL 750.520b, together with one count of first degree home invasion, MCL 750.110a(2). Following a bench trial, defendant was found guilty of first degree criminal sexual conduct (penile penetration), not guilty of first degree criminal sexual conduct (digital penetration) and not guilty of home invasion. Defendant was sentenced as an habitual offender, fourth offense (MCL 769.12). Defendant appeals as of right. We affirm but remand for correction of the judgment of sentence.

**I. Basic Facts and Procedural History**

Defendant and the victim had a child together from a previous relationship. According to the victim, the relationship ended when she moved to Kentucky. However, in May of 1999, the victim moved back to Michigan so that defendant could develop a relationship with his child. Consequently, according to the victim, she only had contact with defendant insofar as necessary to facilitate a relationship between defendant and their child.

During the very first part of December, the victim indicated that defendant appeared at her home at approximately 2:00 or 3:00 a.m. According to the victim, defendant circled her home attempting to discover a way to get in. Defendant managed to open the kitchen window and proceeded to climb through when the victim's older son saw defendant and advised the victim of his presence. The victim indicated that defendant was inebriated so she allowed him to come in, talked with him and permitted him to sleep off the alcohol. The next morning, the victim and defendant began to argue and the victim requested that defendant leave. Defendant complied without incident.

On December 5, 1999, during the early morning hours, defendant, once again, returned to the victim's home. During this visit, defendant remained outside, circled the home and yelled at the victim to allow him to enter. When the victim would not comply, he retaliated by hurling a brick through her bedroom window and then fled. The victim telephoned the police and reported the incident.

After the police left, defendant telephoned the victim and advised that he was about to come over and "do [her.]" Approximately five minutes thereafter, defendant arrived at the victim's home. When defendant appeared, the victim was talking to a friend on the phone who was in turn talking to the police through a three way communication. To entice defendant to remain until the police arrived, the victim carried on a conversation with defendant through the door and relayed what he said to her friend who reported the information to the police. However, defendant left before the police arrived.

Considering that it was approximately 5:00 or 5:15 a.m., the victim laid down and fell asleep. The victim testified that when she awakened, defendant was in the house. The victim and defendant began to argue. According to the victim, defendant verbally berated her while simultaneously pushing her, hitting her, bumping her head against the wall and throwing shoes at her. Additionally, defendant kept pulling her clothes off while she fought to keep them on and struggled to get away. The victim testified that once he successfully removed her clothes, he penetrated her both digitally and with his penis. The victim testified that the assault spanned six hours and occurred in three separate rooms in the house.

After defendant left, an ambulance transported the victim to the hospital. When the victim presented to the emergency room, she gave a complete history of the events surrounding the incident. The emergency room physician noted that the victim had numerous contusions along her wrists and some across her chest. Additionally, the victim had a large contusion on her face and a pelvic examination confirmed the presence of active sperm.

Defendant was charged with one count of first degree home invasion and two counts of first degree criminal sexual conduct. After a bench trial, defendant was found guilty of first degree criminal sexual conduct (penile penetration), not guilty of first degree criminal sexual conduct (digital penetration) and not guilty of home invasion. Defendant was sentenced to twelve to thirty years' imprisonment as an habitual offender, fourth offense. However, the judgment of sentence instead incorrectly reflects that the defendant was found guilty of both counts of first degree criminal sexual conduct and that the count of first degree home invasion was dismissed in accord with a plea agreement. Defendant appeals as of right. We affirm but remand for correction of the judgment of sentence.

## II. Confrontation Clause

First, defendant argues that the trial court erred by limiting his cross-examination of the victim. During defense counsel's cross-examination of the victim, counsel posed a question seeking to elicit from the victim the outcome of a hearing upon defendant's alleged parole violation as a result of an allegation of domestic violence levied by the victim against defendant while defendant was on parole for another offense. The prosecutor objected on the grounds of relevance and the trial court sustained the objection to which defense counsel responded, "All

right. That's fair enough" and did not pursue the matter further. A review of the record thus demonstrates that defense counsel acquiesced in the trial court's decision on the prosecutor's objection. Accordingly, because defense counsel specifically approved the trial court's response, and otherwise failed to make an offer of proof, defendant thereby waived appellate review of this issue. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

### III. Ineffective Assistance of Counsel

Next, defendant contends that he was denied the effective assistance of counsel for trial counsel's abandonment of the above-referenced line of questioning. We disagree.

Pursuant to *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973), claims for ineffective assistance of counsel should be raised by a motion for a new trial or evidentiary hearing. Since defendant did not procure a ruling by the trial court on this issue, defendant's claim for the ineffective assistance of counsel is forfeited save for a review of the existing record. *People v Snider*, 239 Mich App 393, 423; 608 NW2d 502 (2000). The effective assistance of counsel is presumed and the onerous burden of proving otherwise rests squarely upon defendant. *Id.* at 30. To satisfy the requisite evidentiary burden and prevail, defendant must demonstrate that counsel's performance was objectively unreasonable and the representation so prejudicial that he was deprived of his right to a fair trial. *Id.* To establish the requisite prejudice defendant must demonstrate that but for the error of counsel, there was a reasonable probability that the result would have been different. *Id.*

In the case at bar, a review of the record establishes that before abandoning his line of questioning, defense counsel managed to establish that the victim accused defendant of domestic abuse for which defendant was not convicted at a subsequent parole hearing. When asked for the underlying rationale of the parole board's decision not to convict, the court sustained the prosecutor's relevancy objection to which trial counsel acquiesced and pursued a different line of questioning. Defendant fails to establish that but for trial counsel's abandonment of the objectionable line of questioning, he would have been acquitted. *Id.* Accordingly, we do not find error requiring reversal in this regard.

### IV. Expert Medical Testimony

Defendant contends that the trial court erred by permitting Dr. Wright, plaintiff's treating physician, to testify as to the victims injuries because his testimony impermissibly bolstered the victim's credibility. However, defendant failed to object to Dr. Wright's testimony at trial and engaged in cross-examination. Thus, defendant alternatively argues that trial counsel's failure to object to this testimony resulted in the ineffective assistance of counsel.

It is axiomatic that to properly preserve an evidentiary issue for appellate review, the party opposing the admission of testimony must object at trial on the same ground that the party asserts on appeal. *People v Griffin*, 235 Mich App 27, 44; 597 NW2d 176 (1999). Notwithstanding trial counsel's failure to lodge an appropriate objection, this Court may consider unpreserved issues where the failure to do so would result in manifest injustice. *Id.* We find no manifest injustice here.

A necessary element of first degree criminal sexual conduct is the use physical force or

violence to overcome the victim. MCL 750.520b(1)(i). The prosecution properly offered Dr. Wright's testimony on this element. Dr. Wright testified that when the victim presented with "numerous contusions" around her wrists along with some contusions across her chest which were "consistent with . . . some type of grabbing." In addition, Dr. Wright testified that the victim had a large bruise on her face which would be consistent with being struck by another person. An examination of the victim's vaginal discharge confirmed the presence of active sperm. Dr. Wright opined that the victim's injuries were consistent with an individual who recently sustained a sexual assault.

Because there was no basis for excluding Dr. Wright's testimony, counsel was not required to levy futile objections and the failure to do so does not constitute the ineffective assistance of counsel. *People v Meadows*, 175 Mich App 355, 362; 437 NW2d 405 (1989).

#### V. Cumulative Error

Finally, defendant argues that the cumulative effect of these individual errors deprived him of due process of law. We do not agree. The trial court did not err by limiting defendant's cross-examination on an irrelevant matter nor did it err by permitting the victim's treating physician to testify regarding the victim's physical injuries. Where no actual errors are found, a cumulative effect of errors is incapable of being found. *People v Mayhew*, 236 Mich App 112, 128; 600 NW2d 370 (1999)

Affirmed but remanded for correction of the judgment of sentence.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Kirsten Frank Kelly