

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CURTIS MARCO WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

June 14, 2002

No. 229917

Ingham Circuit Court

LC No. 00-075464-FC

Before: Bandstra, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree criminal sexual conduct (CSC I), MCL 750.520b, and first-degree home invasion, MCL 750.110a(2). The trial court sentenced defendant as a third-offense habitual offender, MCL 769.11, to consecutive terms of 500 months' to 650 months' imprisonment for the CSC I conviction, and 200 months' to 480 months' imprisonment for the home invasion conviction. Defendant moved for, and the prosecutor stipulated to, modification of the CSC I sentence because it violated MCL 769.34(2)(b). Thereafter, the trial court modified defendant's sentence for CSC I to 433 1/3 months' to 650 months' imprisonment. We affirm.

This case arises from the victim's allegations that a stranger broke into her apartment late at night while she was sleeping and sexually assaulted her. Defendant did not contest these allegations; rather, the focus of the trial was identification of the perpetrator. The victim identified defendant during the trial as her attacker; however, her identification was impeached by evidence that she previously had misidentified one person and had failed to identify defendant in a photographic show up and a voice identification procedure.¹ The prosecution also introduced DNA profile evidence that according to the prosecution established that defendant was the perpetrator.

On appeal, defendant raises only one issue. Defendant maintains that he is entitled to a new trial because the trial court precluded defense counsel from cross-examining the prosecution's DNA expert regarding the views of other experts on the limitations on the

¹ Apparently, in September of 1999, approximately eighteen months after the incident, the victim alternately was shown six pictures and heard six voices, both of which included defendant. She failed to identify defendant or anyone else.

reliability of the type of statistical analysis that the prosecution's expert used in this case. We disagree. We review a trial court's decision to admit or exclude evidence for an abuse of discretion. *People v Watson*, 245 Mich App 572, 575; 629 NW2d 411 (2001).

At the end of defense counsel's cross-examination of the prosecution's DNA expert witness, the following exchange occurred:

Q. Now, you indicated you have some familiarity with Bruce Werum's work.

A. Yes.

Q. And, but have—have you come across his criticism of using a product rule that requires differentiation?

[*The Prosecutor*]: Objection as to the relevancy of this witness's review of someone else's criticism.

[*Defense Counsel*]: I believe he's an expert; and since he's familiar with his work, he's entitled to indicate to the jury if he's familiar with his criticism of the type of work he does.

The Court: How is it relevant to what the jury needs to decide[?]

[*Defense Counsel*]: Well, the jurors are going to have to decide on the reliability of this method, and if it's – if it's got limitations, the jury's entitled to know of the limitations of the PCR method.

The Court: You can't establish limitations from hearsay testimony. The objection's sustained.

[*Defense Counsel*]: Nothing further of this witness.

Defendant maintains that by sustaining the prosecution's objection to this question the trial court precluded him from "attempting to elicit from [the prosecution's] expert an admission that highly reliable experts (like Dr. Werum) had acknowledged that using the 'product rule' to determine the likelihood of a random match using any differentiated population could lead to major errors in the statement of probability." Immediately after making this assertion, however, defendant concedes that the same point "was made previously by [the prosecution's expert's] testimony on direct." Thus, defendant cannot show that the trial court's ruling had any effect on the trial because the evidence defendant sought to admit was already in evidence. Although defendant argues that the point may have been obscure to the jury and therefore needed further development, the importance of the evidence could be demonstrated to the jury during counsel's closing argument. Under the facts of this case, even if error occurred it does not appear that, more probably than not, the alleged error was outcome determinative. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

To the extent that defendant contends that the trial court should not have sustained the objection because "[t]his cross-examination was similar to use of a learned treatise for impeachment as limited by MRE 707," we find his argument without merit. Here, defendant did

not present the witness with a learned treatise, and consequently, MRE 707 is not at issue and the rule has no application.

Affirmed.

/s/ Richard A. Bandstra

/s/ Joel P. Hoekstra

/s/ Peter D. O'Connell