STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRADLEY DAVID BELL,

Defendant-Appellant.

UNPUBLISHED
November 5, 2002

No. 234221
Oakland Circuit Court
LC No. 2000-174941-FC

Before: Talbot, P.J., and Whitbeck, C.J., and Gage, J.

PER CURIAM.

A jury convicted defendant Bradley David Bell of first-degree criminal sexual conduct (CSC I)[1] and second-degree criminal sexual conduct (CSC II).[2] The trial court sentenced Bell to concurrent terms of 6 to 25 years' imprisonment for CSC I, and 2 to 15 years for CSC II.[3] Bell appeals as of right. We affirm. We decide this case without oral argument pursuant to MCR 7.214(E).

Bell argues that his trial counsel provided ineffective assistance by failing to object to expert testimony from a forensic scientist with the Michigan State Police. We disagree. We review a claim of ineffective assistance of counsel de novo.[4] One requirement for establishing ineffective assistance of counsel is showing that counsel's performance was below an objective standard of reasonableness.[5] In this regard, there is a presumption that the challenged action might be considered sound trial strategy.[6] We believe that not objecting to the testimony in question was in the realm of reasonable trial strategy. The expert's testimony indicated that Bell's DNA was *not* found in a stain on the complainant's underwear, underscoring the lack of physical evidence to corroborate the complainant's testimony that Bell sexually assaulted her.

[1] MCL 750.520b(1)(a).

[2] MCL 750.520c(1)(a).

[3] Bell also pled guilty to possession of marijuana, MCL 333.7403(2)(d), for which he was sentenced to 221 days in jail, equivalent to his credit for time served. The marijuana conviction is not at issue in this appeal.

[4] *People v Kevorkian*, 248 Mich App 373, 410-411; 639 NW2d 291 (2001).

[5] *Id.* at 411.

[6] *Id.*

Further, our review of the record indicates that trial counsel attempted to use the expert testimony to imply that the complainant may have put her own saliva on her underwear in an effort to falsely implicate Bell. Thus, Bell has not established his claim of ineffective assistance of counsel.

Bell contends that the prosecutor improperly argued that a showing of "penetration" was unnecessary for the jury to convict Bell of CSC I. We conclude that Bell is not entitled to relief based on this issue. This issue was not preserved below. Accordingly, reversal would be warranted only if any forfeited error resulted in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings.[7] The prosecutor's argument was that Bell would be guilty of CSC I if he engaged in oral-genital contact with the complainant even if he did not penetrate her in the sense of entering her internal genital area. The prosecutor was correct in this regard. While a showing of "sexual penetration" is a necessary element to establish CSC I,[8] "sexual penetration" is defined as including "cunnilingus."[9] Cunnilingus includes oral contact with a female's *external* genital area.[10] Thus, Bell has not established any prejudicial error based on this issue, let alone error that resulted in the conviction of an actually innocent defendant or that seriously affected the fairness, integrity, or public reputation of his trial.

Bell argues that there was insufficient evidence to support his CSC I conviction. We disagree. This issue is not properly presented for review because it is not in the scope of the statement of questions presented in Bell's brief.[11] Regardless, there was sufficient evidence to support Bell's CSC I conviction. In deciding if there is sufficient evidence to support a conviction, we view the evidence in the light most favorable to the prosecution to determine whether a rational factfinder could have found the elements of the crime proven beyond a reasonable doubt.[12] Sexual penetration with a child under the age of thirteen constitutes CSC I.[13] The complainant testified at trial that, when she was ten years old, Bell licked her vagina with his tongue. Because any oral contact with the female genitals constitutes sexual penetration, this testimony was obviously sufficient evidence to support a finding that Bell committed CSC I by engaging in sexual penetration with a child less than thirteen-years-old.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Hilda R. Gage

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[7] *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

[8] MCL 750.520b.

[9] MCL 750.520a(m).

[10] *People v Legg*, 197 Mich App 131, 132-134; 494 NW2d 797 (1992).

[11] *People v Brown*, 239 Mich App 735, 748; 610 NW2d 234 (2000).

[12] *Id.* at 742.

[13] MCL 750.520b(1)(a).