

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VERDELL C. PHILLIPS,

Defendant-Appellant.

UNPUBLISHED

January 6, 2004

No. 243043

Wayne Circuit Court

LC No. 01-010412-01

Before: Donofrio, P.J., and Griffin and Jansen, JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of first-degree criminal sexual conduct, MCL 750.520b(1)(b), and was sentenced to twenty to sixty years' imprisonment. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's fifteen-year-old daughter claimed that one night while she was visiting him, he laid down in a bed next to her, began fondling her, and then had sexual intercourse with her. Defendant claimed that while he was half asleep, his daughter got into his bed and "scooted back up against" him. He said that he initially assumed she was his girlfriend, that when he opened his eyes and saw that it was his daughter he angrily asked her what she was doing, and that he then got out of bed and went to the living room.

Defendant asserts that the trial court abused its discretion in sustaining an objection when his counsel asked his daughter if she "had made an accusation like this against someone else in the past." Evidence of a complainant's prior sexual history is generally inadmissible under the rape shield statute, MCL 750.520j. However, a defendant may show that a complainant has made false accusations of rape in the past. *People v Hackett*, 421 Mich 338, 348-349; 365 NW2d 120 (1984). In *People v Williams*, 191 Mich App 269, 272-273; 477 NW2d 877 (1991), this Court stated:

[T]he rape-shield statute does not preclude introduction of evidence to show that a victim has made prior false accusations of rape. Such false accusations are relevant in subsequent prosecutions based upon the victim's accusations because the fact that the victim has made prior false accusations of rape directly bears on the victim's credibility and the credibility of the victim's

accusations in the subsequent case, and preclusion of such evidence would unconstitutionally abridge the defendant's right to confrontation.

. . . the defendant is obligated initially to make an offer of proof with regard to the proposed evidence and to demonstrate its relevance to the purpose for which the evidence is sought to be admitted. If necessary, the trial court should conduct an evidentiary hearing in camera to determine the admissibility of the evidence, and at the hearing, the trial court has the responsibility of restricting the scope of cross-examination to prevent questions that would harass, annoy, or humiliate the victim and to guard against fishing expeditions.

Defendant never established there was a prior accusation, let alone a prior false accusation or an accusation of rape. He can show only that an objection was sustained when asked about a prior accusation. On this record, we can find no abuse of discretion. Defendant alternatively requests a remand for an evidentiary hearing to see if he can establish a prior false accusation. Even if the failure to preserve the issue below could be excused, he has not presented an affidavit or any evidence to suggest that he could establish this fact. Since *Williams* indicates that a fishing expedition will not be permitted at or before trial, we will not remand so as to permit such a fishing expedition.

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard Allen Griffin
/s/ Kathleen Jansen