

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN SHAWN EDWARDS,

Defendant-Appellant.

UNPUBLISHED

June 22, 2004

No. 246608

Washtenaw Circuit Court

LC No. 01-000894-FH

Before: Fitzgerald, P.J., and Bandstra and Schuette, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of three counts of third-degree criminal sexual conduct, MCL 750.520d(1)(b), and was sentenced to concurrent prison terms of three to fifteen years for each conviction. Defendant appeals as of right. We affirm.

According to complainant, she and defendant had been “casual friends” up until the night the crimes were committed. That night, defendant went over to complainant’s apartment, and while he and complainant were watching television, defendant began making sexual advances towards her. Defendant did not respond to complainant’s requests that he stop his behavior except to threaten to hit the complainant if she continued to refuse him. Defendant forcibly penetrated the complainant’s vagina with his penis several times over the course of a few hours that evening. One of the complainant’s neighbors, who aided the complainant later in the evening, testified that during the evening she heard a woman yelling at someone named “Kevin” to get out of her apartment. It was defendant’s testimony at trial that he was not at the complainant’s apartment the night of the crimes, but that he was instead out driving around with friends.

Defendant now argues that, for a variety of reasons, his trial counsel was ineffective, and that this merits reversal of his convictions and remand for a new trial. We disagree. Ineffective assistance of counsel requiring reversal occurs when the assistance rendered falls so far below an objective standard of reasonable professional conduct that defendant was denied a fair trial, and was prejudiced by counsel’s errors. *People v Hoag*, 460 Mich 1, 5-7; 594 NW2d 57 (1999).

Defendant argues that his trial counsel failed to adequately probe bias that five of the jurors made apparent while being questioned by the trial court. Defendant did not present this argument before the trial court; therefore, our review is limited to mistakes apparent on the record. *People v Rodriguez*, 251 Mich App 10, 38; 650 NW2d 96 (2002). After a thorough

review of the voir dire conducted by the trial court and by the attorneys in this case, we cannot conclude that counsel's performance during jury selection fell below an objective standard of reasonableness. *Hoag, supra*. Defendant's remaining unpreserved claims of ineffective assistance of counsel, including that his trial counsel was ineffective because he did not vigorously cross-examine the prosecution's witnesses, that he failed to object enough to the prosecution's case, and that he did not investigate and introduce alibi witnesses, are similarly not supported by the record.

Defendant also contends that defense counsel was ineffective for failing to impeach complainant with evidence that she filed a prior complaint of forcible rape in 1998. Because the defendant in that prior case pleaded guilty, the trial court correctly concluded that this evidence had no bearing on the complainant's credibility because there was no evidence of fabrication in the earlier case. The evidence would therefore have been inadmissible, and defendant suffered no prejudice by defense counsel's failure to introduce this evidence.

Defendant also claims that the trial court abused its discretion when it denied his motion for a new trial on the basis of newly discovered evidence. We disagree. The evidence that defendant defines as newly discovered consists of police reports that could easily have been discovered and produced at trial through the exercise of reasonable diligence. *People v Miller (After Remand)*, 211 Mich App 30, 46-47; 535 NW2d 518 (1995).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Richard A. Bandstra
/s/ Bill Schuette