STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 22, 2009
v	No. 287177 Ottawa Circuit Court
BREN HAYDEN BUTLER, Defendant-Appellant.	LC No. 07-031561-FC

Before: Fort Hood, P.J., and Sawyer and Donofrio, JJ.

PER CURIAM.

Defendant was found guilty by a jury of one count of first-degree criminal sexual conduct (CSC-1), MCL 750.520b(1)(f), and two counts of assault with intent to commit criminal sexual conduct involving penetration, MCL 750.520g(1). He was sentenced to concurrent terms of 8 to 30 years' imprisonment for the CSC-1 conviction and 3 to 10 years' imprisonment for each of the assault convictions. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

As his sole issue on appeal, defendant claims he was denied a fair trial when the trial court prohibited his attorney from questioning a police detective about an alleged prior inconsistent statement made by the 72-year-old victim. Specifically, defense counsel sought to ask the detective whether the victim had stated during an interview following the incident that defendant might have believed she was consenting to his sexual advances. The trial court sustained the prosecutor's objection on the ground that the alleged statement called for speculation about defendant's thoughts at the time of the incident.

The trial court did not abuse its discretion in prohibiting defense counsel from asking the police detective whether the victim made a statement in her police report that defendant might have believed she was consenting to his sexual advances, which statement was inconsistent with her trial testimony. The alleged statement to the police clearly involved speculation on the part of the victim and was not admissible under MRE 602. See *People v Burwick*, 450 Mich 281, 297; 537 NW2d 813 (1995). Defense counsel could, and did, question the victim as to whether she did or said anything that might indicate she was consenting to defendant's sexual advances. That line of questioning was proper because it did not call for speculation as to what defendant might have believed at the time. Also, counsel could, and did, question the police detective whether the victim's in-court testimony about explicitly rejecting defendant's advances was inconsistent with anything she said in her statement to the police after the incident.

Even assuming the trial court abused its discretion in prohibiting defense counsel's questions, we hold the error was harmless. It cannot be said that one juror might have voted to acquit defendant given the overwhelming weight of the evidence against him, *People v Clemons*, 177 Mich App 523, 527, 442 N.W.2d 717 (1989); *People v Christensen*, 64 Mich App 23, 33; 235 NW2d 50 (1975). Further, defendant claimed the victim willingly performed fellatio on him but denied any digital penetration or penile intercourse with her. Hence, the defense of consent applied to only one of the sexual assault convictions. Consent was not applicable to the convictions of CSC-1 and the other assault given defendant's insistence that those offenses never occurred. In convicting defendant of all three charges, the jury clearly believed the victim's version of the incident to be credible. This Court will not interfere with the factfinder's role of determining the weight of evidence or the credibility of witnesses. *People v Wolfe*, 440 Mich 508, 514; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Passage*, 277 Mich App 175, 177; 743 NW2d 746 (2007).

Affirmed.

/s/ Karen M. Fort Hood
/s/ David H. Sawyer
/s/ Pat M. Donofrio