

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
September 20, 2011

v

WILLIE JAMES HARRIS,

Defendant-Appellant.

No. 298340
Washtenaw Circuit Court
LC No. 09-001378-FC

Before: RONAYNE KRAUSE, P.J., and CAVANAGH and JANSEN, JJ.

PER CURIAM.

Defendant appeals by right his bench-trial convictions of two counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a), and one count of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a). He was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 50 to 80 years for the CSC I convictions and 19 to 80 years for the CSC II conviction. We affirm.

Defendant was convicted of sexually abusing the five-year-old grandson of his former girlfriend Crystal Smith. At trial, the grandson testified that there were three separate incidents when defendant sexually abused him, all of which occurred while he was staying at his grandmother's house in Ypsilanti in April 2009. When the grandson returned to his own house in Detroit, he disclosed the abuse to his mother who immediately contacted the Detroit Police Department. Because the abuse occurred in Ypsilanti, a report was made with the Ypsilanti Police Department as well. Smith reported the sexual abuse to the Ypsilanti Police Department in May 2009.

Defendant moved for a remand in this Court, MCR 7.211(C)(1), on the basis of newly discovered evidence contained in a letter that his sister, Amelia Letts, had sent to him after he was convicted. In the letter, Letts indicated that Smith had confronted defendant's sisters by asking for money and had alluded to sexual abuse allegations against defendant. This Court denied the motion based on the evidence before it at the time.¹ On appeal, defendant again

¹ *People v Harris*, unpublished order of the Court of Appeals, entered March 10, 2011 (Docket No. 298340). Although this Court has previously denied defendant's motion for a remand, our

maintains that the case should be remanded to the trial court for an evidentiary hearing based on the newly discovered evidence. After plenary review of the merits of defendant's request, we conclude that a remand is not warranted.

Pursuant to MCR 7.211(C)(1), an appellant may seek a remand to the trial court on the ground that "the issue is one that is of record and must be initially decided by the trial court" or that "development of a factual record is required for appellate consideration of the issue." Defendant has not made either showing here.

Moreover, we conclude that defendant has failed to establish that the alleged newly discovered evidence entitles him to a new trial. In *People v Cress*, 468 Mich 678, 692; 664 NW2d 174 (2003), our Supreme Court delineated the standards for granting a new trial on the basis of newly discovered evidence:

For a new trial to be granted on the basis of newly discovered evidence, a defendant must show that: (1) the evidence itself, not merely its materiality, was newly discovered; (2) the newly discovered evidence was not cumulative; (3) the party could not, using reasonable diligence, have discovered and produced the evidence at trial; and (4) the new evidence makes a different result probable on retrial. [Quotations and citation omitted.]

In addition, "[n]ewly discovered evidence is not ground for a new trial where it would merely be used for impeachment purposes." *People v Davis*, 199 Mich App 502, 516; 503 NW2d 457 (1993).

Even assuming arguendo that the evidence is truly "newly" discovered, it is essentially cumulative and would not make a different result probable on retrial. Evidence of the animus between Smith and defendant was presented at trial, where defendant fully pursued his theory that Smith had coached her grandson to lie and fabricate the sexual abuse allegations. Defendant admits that the alleged confrontation between Smith and defendant's sisters occurred before Smith reported the allegations of abuse to the police. Thus, with reasonable diligence, defendant could have discovered the information before trial and could have produced his sister as a witness. In addition, it is clear that the alleged newly discovered evidence would be used primarily for impeachment purposes. *Id.* Finally, the alleged new evidence does not make a different result probable on retrial. The letter simply does not contain any evidence, nor does it support a reasonable inference, that Smith coached her grandson to lie about the sexual abuse allegations. Letts specifically wrote in the letter that she did not fully remember everything that had happened.

In reaching its verdict, the trial court fully considered the animus between Smith and defendant and defendant's theory that Smith had coached her grandson to lie. Under the circumstances, defendant has failed to establish the need for a remand. Nor would the alleged new evidence constitute grounds for a new trial.

previous ruling does not constitute the law of the case because it was not a decision on the merits. See *People v Pauli*, 138 Mich App 530, 541; 361 NW2d 359 (1984).

Affirmed.

/s/ Amy Ronayne Krause

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen