

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
November 22, 2011

v

WILLIAM DARNELL COLLIER,  
  
Defendant-Appellant.

No. 299928  
Kalamazoo Circuit Court  
LC No. 2009-002038-FC

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Before: WILDER, P.J., and HOEKSTRA and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions of three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(f), and one count of unlawful imprisonment, MCL 750.349b. Defendant was sentenced as an habitual offender, fourth offense, pursuant to MCL 769.12, to 25 to 60 years' imprisonment for each conviction. For the reasons stated in this opinion, we affirm.

Defendant's convictions arise from an arrangement in which the victim agreed to have sexual intercourse with defendant in exchange for crack cocaine. The victim and defendant procured the drugs and returned to defendant's apartment. The victim and defendant smoked the crack cocaine and engaged in consensual sexual conduct. After the crack cocaine was gone, the victim and defendant decided to obtain more crack cocaine and each contributed \$10 toward that endeavor. Defendant drove the victim to a place where drugs could be purchased and the victim purchased the drugs. Defendant and the victim returned to defendant's apartment and smoked the crack cocaine. The victim testified that after smoking the crack cocaine she informed defendant she was leaving. Defendant responded by striking her in the head and telling her to remove her clothing. Defendant attempted to forcibly engage in vaginal intercourse with the victim and also forced her to perform oral sex. At one point, the victim grabbed a screwdriver and attempted to stab defendant and escape, but defendant grabbed her arm before she could stab him and struck her. Eventually, the victim was able to escape and later reported the incident to police.

**I. DEFENDANT'S MOTION FOR A MISTRIAL**

Defendant argues that the trial court abused its discretion when it denied his motion for a mistrial. Specifically, defendant argues that his right to a fair trial was prejudiced when police officer Michael Skurski injected into the trial the fact that defendant had a parole agent.

We review a trial court's decision regarding a motion for a mistrial for an abuse of discretion. *People v Schaw*, 288 Mich App 231, 236; 791 NW2d 743 (2010). An abuse of discretion occurs only if the trial court's decision is outside the range of principled outcomes. *Id.* "A trial court should grant a mistrial only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial." *Id.* (quotation and citation omitted).

An unresponsive and volunteered answer to a proper question is not generally cause for granting a mistrial. *People v Gonzales*, 193 Mich App 263, 266-267; 483 NW2d 458 (1992). In this case, the witness who referenced defendant's "parole agent" was a police officer. Unresponsive remarks volunteered by police officers are examined with greater scrutiny. *People v Holly*, 129 Mich App 405, 415; 341 NW2d 823 (1983).

Here, during the direct examination of Skurski, the prosecutor was asking him about what he observed defendant doing on the day after the sexual assault. Skurski explained that he saw defendant outside washing a car. The prosecutor then asked Skurski what he did next, anticipating that the officer would say he approached defendant. Instead, Skurski stated: "Sergeant Kozal told me that he had been in contact with defendant's parole agent." Immediately after Skurski said "parole agent" the prosecutor cut him off and stated: "No, okay. We don't want to talk about that." After the prosecutor interrupted Skurski, defense counsel asked to approach the bench. The jury was dismissed, and defense counsel moved the trial court for a mistrial. After hearing arguments from both parties, the trial court denied defendant's motion and thereafter, upon the jury's return to the court room, instructed the jury to disregard the witness's last answer.

Because this case essentially revolved around a credibility contest between the victim and defendant, whether defendant was denied a fair trial by Skurski injecting defendant's parole status into evidence is a close question. However, after considering all the circumstances, we conclude that the trial court's decision to deny defendant's motion was not outside the range of principled outcomes.

Initially, as both the trial court and defense counsel acknowledged, we note that the improper testimony was completely unresponsive to the question asked and therefore, was not solicited by the prosecution. The prosecution asked defendant a proper question, and the prosecutor could not have anticipated that the posed question would solicit a response disclosing defendant's parole status. And in addition, we find significant the proactive response by the prosecutor who immediately interrupted Skurski and stated in the presence of the jury that this was not to be "talked about." In so doing, the prosecutor did everything possible to immediately remediate the error. Further, any prejudice caused by the reference to defendant's parole agent was cured by the trial court's prompt instruction to disregard Skurski's comments. "Jurors are presumed to follow their instructions, and instructions are presumed to cure most errors." *People v Bauder*, 269 Mich App 174, 195; 712 NW2d 506 (2005). Because the prosecutor was proactive in attempting to minimize the error and the trial court instructed the jury to disregard the testimony, we conclude that even under the greater scrutiny given to police officer testimony, defendant was not prejudiced to the extent that his trial was not fair.

## II. INEFFECTIVE ASSISTANCE OF COUNSEL

Defendant argues that he was provided ineffective assistance of counsel. Specifically, defendant claims that trial counsel was ineffective by failing to impeach the victim's testimony and by failing to object to hearsay testimony.

Our review is limited to mistakes apparent on the record because defendant did not move for a new trial or evidentiary hearing in the trial court. *People v Davis*, 250 Mich App 357, 368; 649 NW2d 94 (2002). In order to prevail on an ineffective assistance of counsel claim, the burden is on defendant to demonstrate that trial counsel's performance fell below an objective standard of reasonableness, and that the deficiency so prejudiced defendant as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 302-303, 312; 521 NW2d 797 (1994).

Defendant first argues that trial counsel was ineffective because he did not impeach the victim with her inconsistent testimony from defendant's parole revocation hearing. Defendant also argues that the victim's statement at the previous hearing, that she would have agreed to have sex with defendant if he would have had more money, should have been introduced to give the jury a complete context. From the record, it appears the inconsistent portions of the victim's testimony did not concern the actual sexual assault, the details of which remained consistent throughout the victim's testimony. The inconsistencies were minor; the fact that the victim previously testified that a condom was used during the consensual sex act and that she bought the cocaine with her own money at a previous hearing and then omitted the information about the condom and testified that her and defendant both contributed money to the cocaine at trial does not significantly cast doubt on the victim's credibility. There is a strong presumption that defense counsel's performance constituted sound trial strategy, and defense counsel's decision not to impeach the victim with previous testimony given at a parole hearing could be considered reasonable trial strategy because it would prevent the jury from learning that defendant was on parole. *People v Matuszak*, 263 Mich App 42, 58; 687 NW2d 342 (2004).

Further, defendant cannot establish that any error by his attorney was prejudicial to his rights because defendant did not demonstrate that there is a reasonable probability that the outcome of the trial would have been different but for counsel's failure to impeach the victim with her inconsistent testimony. *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984). Even without impeachment of the victim, the jury was aware that the victim was a prostitute and that she traded sex for drugs or money. Thus, impeachment was not necessary to provide context to the jury because it already knew about the context in which the assault occurred.

Next, defendant argues that trial counsel was ineffective because counsel failed to object to the introduction of inadmissible hearsay during the victim's testimony. During the victim's testimony, she described going to confront defendant later on the day that she was sexually assaulted. The victim testified that a woman opened the door. When the victim told the woman at the door that defendant "raped" her, the woman said "I believe you" and "you're not the first person that said this about him."

MRE 801(c) defines hearsay as "a statement, other than the one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Assuming defense counsel was deficient for failing to object to the hearsay statements, defendant has not established that the testimony prejudiced his case. No follow up

questions regarding the woman's statement about defendant were asked and the statement was not emphasized during the rest of the trial. If defense counsel would have objected, it might have drawn additional attention to the allegation. Further, the woman at the door did not even say that she knew defendant previously sexually assaulted someone, she merely stated she had heard that about defendant before. Additionally, the victim specifically and unequivocally testified to the acts of sexual assault that occurred. In a criminal sexual conduct case, the victim's testimony alone is sufficient to support a conviction. *People v Smith*, 205 Mich App 69, 71; 517 NW2d 255 (1994). In this case, the jury clearly believed the victim's testimony because it convicted defendant; it is unlikely that a passing reference to a rumor about previous sexual assaults carried out by defendant was the determining factor. Accordingly, we find that defendant failed to demonstrate that there is a reasonable probability that the outcome of the trial would have been different but for counsel's failure to object to the testimony. Defendant has not satisfied his burden of proving prejudice and has consequently failed to establish he was provided ineffective assistance of counsel.

Affirmed.

/s/ Kurtis T. Wilder

/s/ Joel P. Hoekstra

/s/ Stephen L. Borrello