

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LEWIS AARON NIXON, JR.,

Defendant-Appellant.

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UNPUBLISHED

June 7, 1996

No. 170576

LC No. 93-000581

Before: Taylor, P.J., and Murphy and E.J. Grant,\* JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for first-degree criminal sexual conduct, MCL 750.520b(1)(b); MSA 28.788(2)(1)(b). Defendant was sentenced to twenty to forty years' imprisonment. We affirm.

Defendant first argues that the trial court erred in allowing him to proceed in propria persona by failing to advise him of the dangers of self-representation as required by case law and MCR 6.005(D)(E). We disagree.

The trial court did not err in allowing defendant to proceed in propria persona. Although the record indicates that the trial court did not succinctly comply with the requirements before allowing defendant to proceed in propria persona, as enumerated in the relevant case law and court rules we do not find that reversal is required. *People v Dennany*, 445 Mich 412, 438-439; 519 NW2d 128 (1994); MCR 6.005(D); *People v Anderson*, 398 Mich 361, 366; 247 NW2d 857 (1976); MCR 6.005(D)(E). The record reflects not only defendant's desire to represent himself, but also his adamant desire to do so. The record also supports a finding that the trial court attempted to caution defendant of the dangers of proceeding in propria persona, and the court allowed defendant to "switch hit" between self-representation and legal representation throughout the course of the trial. Accordingly, we find that where the trial court substantially complied with the relevant requirements of self-representation and

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\* Circuit judge, sitting on the Court of Appeals by assignment.

defendant knowing chose to represent himself, we will not allow him an appellate parachute now. *Dennany, supra*, 439; *People v Riley*, 156 Mich App 396, 401; 401 NW2d 875 (1986).

Defendant next argues that the trial court erred in not requiring the prosecutor to produce a res gestae witness, the physician who examined the complainant, and in not admitting the physician's medical report. Defendant admits that he acquiesced to the prosecutor's use of a stipulated set of facts in lieu of calling the physician; however, defendant contends that this did not operate as a waiver of his right to confront the physician or to present a medical report. We disagree.

After reviewing the record, we find that the trial court did not commit clear error in finding that the prosecutor was not required to produce the physician who examined the complainant, where the record indicates that defendant admittedly stipulated to the physician not being called and to the physician's findings being read into evidence. *People v Watkins*, 209 Mich App 1, 4; 530 NW2d 111 (1995) In addition, we find that even if defendant were correct in claiming that the report itself should have been introduced, we find that the court did not abuse its discretion in excluding it because defendant was allowed to argue the contents of the report to the jury. *People v Watkins*, 176 Mich App 428, 430; 440 NW2d 36 (1989).

Defendant next argues that the trial court erred in allowing the prosecutor to impeach him with evidence of a prior arrest for criminal sexual conduct for which defendant was not convicted. We disagree.

The prosecutor did not offer defendant's prior act to show defendant's propensity toward rape. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993). The prosecutor used the evidence to impeach defendant's statement that he had never before accused someone of falsely accusing him of a crime. *VanderVliet, supra*, 74-75; MRE 402. Although the prior charge was also for criminal sexual conduct, the danger of undue prejudice does not substantially outweigh the probative value of the evidence in refuting defendant's defense in the case. *VanderVliet, supra*, 74-75; MRE 403. Accordingly, we conclude that the trial court did not abuse its discretion in allowing the prosecution to impeach defendant with evidence of his prior bad act.

Affirmed.

/s/ Clifford W. Taylor  
/s/ William B. Murphy  
/s/ Edward J. Grant