STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 25, 1996
v WILLIE THOMAS SMALL, Defendant-Appellant.	No. 175662 LC No. 92-27443-FC

Before: Corrigan, P.J., and Taylor and D. A. Johnston,* JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). We affirm.

First, defendant alleges error in allowing Detective Charles Ghent to testify as an expert on the behavior of rape victims. We review a trial court's decision to qualify an expert for abuse of discretion. *People v Christel,* 449 Mich 578, 592, n 25; 537 NW2d 194 (1995). A witness may be qualified as an expert by knowledge, skill, experience, training or education; the test of qualification is broad. MRE 702; *Id.* The officer's testimony shows that he had twenty-five years' experience and had investigated 270 criminal sexual conduct cases. The court did not abuse its discretion in determining that he was qualified to testify as an expert.

Defendant also contends that the court erred in allowing Detective Ghent to testify that a delay in reporting a sexual assault case was not uncommon. We will not reverse the trial court's decision on the admissibility of expert testimony absent an abuse of discretion. *People v Smith,* 425 Mich 98, 106; 387 NW2d 814 (1986). The testimony could have aided the factfinder in making the ultimate decision. *Id.* at 105. It was the jury's duty to determine the extent of Ghent's expertise. *People v Whitfield,* 425 Mich 116, 123-124; 388 NW2d 206 (1986). Moreover, defendant placed the matter in issue at trial by eliciting evidence that the victim fabricated the incident when he cross-examined her regarding whether she immediately reported the incident. See *People v King,* 158 Mich App 672, 677; 405 NW2d 116 (1987). The court did not abuse its discretion in allowing the testimony.

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

Next, defendant contends that the court erred by instructing the jury that it was not necessary to have evidence corroborating the testimony of the victim if the jury believed that the victim's testimony proved defendant guilty beyond a reasonable doubt. Because defendant did not object to this instruction at trial, we will reverse only for manifest injustice. *People v Ullah*, 216 Mich App 669, 676-677; 550 NW2d 568 (1996). We find no manifest injustice because the court's instruction comports with MCL 750.520h; MSA 28.788(8) and CJI2d 20.25. There is nothing improper about this instruction, especially when defendant argued in closing that there was a lack of corroborative evidence. See *People v Smith,* 149 Mich App 189, 195; 385 NW2d 654 (1986).

Defendant also contends that the court erred by failing to exclude hearsay testimony from witnesses Tonya Melton and Caesar Briefer. This issue is unpreserved because defendant did not object at trial. *People v Grant*, 445 Mich 535, 546; 520 NW2d 123 (1994). Moreover, because defendant's defense theory was that the victim was fabricating, the out-of-court statements by the victim, as recalled by Melton and Briefer, were admissible pursuant to MRE 801(d)(1)(B). Further, the statement to Briefer was also admissible pursuant to MRE 803(4).

Finally, defendant raises two sentencing issues. Defendant first argues that the court improperly considered a 1974 sex offense conviction in order to apply the statutory minimum of five years for a second offense under MCL 750.520f; MSA 28.788(6). Defendant's argument that the statute does not allow consideration of a conviction that is old is incorrect because the statute states that it includes a conviction "at any time." MCL 750.520f(1); MSA 28.788(6)(1). Defendant's argument that the statute does not allow consideration of a conviction under a predecessor statute is also without merit because the statute specifically refers to a conviction "under any similar statute." MCL 750.520f(1); MSA 28.788(6)(1).

Defendant also contends that the court's score of five points under Offense Variable (OV) 7 for exploitation of the victim was erroneous. Our review of guidelines calculations is very limited and we will not disturb the scoring where there is record evidence to support it. *People v Johnson,* 202 Mich App 281, 288; 508 NW2d 509 (1993), lv den 445 Mich 929; 521 NW2d 11 (1994). Despite defendant's contention to the contrary, the record supports the conclusion that the victim's use of drugs and alcohol made her vulnerable to exploitation by defendant. Also, defendant misinterprets the court's finding as meaning that the court solely relied on evidence of the victim's drug and alcohol usage as showing vulnerability. The court found that defendant exploited the victim's vulnerability, especially when the victim was under the influence of drugs, which implies that there were other factors. Although the court did not state what the other factors were, the record indicates that the victim was of smaller stature in comparison to defendant, that defendant physically restrained her, and that she was a foreigner alone in the United States, all of which are properly considered under OV 7. See *Michigan Sentencing Guidelines* (2d Ed 1988), p 45. In any event, a score of "0" instead of "5" on OV 7 would not have changed the guidelines range and any scoring error would therefore be harmless. *Johnson, supra* at 290.

Affirmed.

/s/ Maura D. Corrigan
/s/ Clifford W. Taylor
/s/ Donald A. Johnston