

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE ALEXANDER WOODSON,

Defendant-Appellant.

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UNPUBLISHED  
November 8, 1996

No. 181010  
LC No. 94-004022

Before: Markman, P.J., and Smolenski and G. S. Buth,\* JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(e); MSA 28.788(2)(1)(e). Defendant was sentenced to serve concurrent terms of ten to twenty years for each of the three counts. He appeals as of right. We affirm.

Defendant first argues that he was denied a fair trial when police failed to conduct a court-ordered polygraph examination. We disagree. Under Michigan law, a defendant who allegedly has committed first-degree criminal sexual conduct has an absolute right to receive such an examination. MCL 776.21(5); MSA 28.1274(2)(5). Because defendant was charged with three counts of first-degree criminal sexual conduct pursuant to MCL 750.520b(1)(e); MSA 28.788(2)(1)(e) and because he requested a polygraph examination, he had a right to one. *People v Sterling*, 154 Mich App 223, 234; 397 NW2d 182 (1986); *People v Rogers*, 140 Mich App 576, 579 (1985). However, we find, upon review of the record, that defendant knowingly and voluntarily relinquished his statutory right to a polygraph examination at the outset of trial. Consequently, we conclude that defendant's claim is without merit.

Defendant also argues that the trial court erred in failing to instruct the jury that reasonable doubt can arise from "the lack of evidence" and in failing to instruct the jury with regard to flight. However, defendant failed to object to the instruction regarding reasonable doubt or request the issuance of a flight instruction. Thus, this unpreserved issue will be reviewed only in order to prevent manifest injustice. *People v Van Dorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993); *People v Haywood*, 209

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

Mich App 217, 230; 530 NW2d 497 (1995). Upon careful review of the record, we find no such injustice. Read in their entirety, the actual instructions to the jury fairly presented the issues to be tried and sufficiently protected the defendant's rights. *People v Wolford*, 189 Mich App 478, 481; 473 NW2d 767 (1991). The instructions "adequately presented the concept of reasonable doubt to the jury," *People v Sammons*, 191 Mich App 351, 372; 478 NW2d 901 (1991). Further, an instruction concerning flight was not compelled in view of the fact that the prosecutor did not refer to defendant's attempted flight in either its opening or closing statements and never argued that such flight evidenced defendant's substantive guilt.

Defendant next argues that his counsel was ineffective because counsel (1) failed to object to inadmissible hearsay, (2) argued facts not in evidence, and (3) failed to object to alleged instructional errors. However, defendant failed to move for a new trial or an evidentiary hearing on this basis. Accordingly, appellate review is limited to the record. *People v Armendarez*, 188 Mich App 61, 73-74; 468 NW2d 893 (1991). Upon review of the record, we find that defendant has neither sustained his burden of proving that counsel made a serious error that affected the outcome of trial nor overcome the presumption that counsel's actions were strategic. *People v LaVearn*, 448 Mich 207, 213; 528 NW2d 721 (1995).

Defendant next argues that he was denied a fair trial because the trial judge improperly impeded his cross-examination of a prosecution witness. We disagree. A trial court has broad, but limited, discretion in the matter of trial conduct. Consequently, in reviewing a claim of judicial misconduct, we review the record in its entirety and determine whether the trial court's "conduct or comments unduly influence[d] the jury and thereby deprive[d] the defendant of a fair and impartial trial." *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). Here, defendant contends that the court's sua sponte objection prematurely terminated cross-examination of a prosecution witness and thereby prejudiced defendant by indirectly bolstering the credibility of complainant. However, review of the entire exchange demonstrates that the court was simply preventing defendant from harassing the witness and venturing into irrelevant material. Because the allegedly improper conduct neither expressly nor impliedly prevented effective cross-examination of the witness, we find that defendant was not denied a fair trial.

Defendant next contends that the prosecutor committed misconduct by attempting to establish, through innuendo, facts not in evidence. Because defendant failed to object to the allegedly improper conduct, appellate review is precluded unless a curative instruction could not have eliminated the prejudicial effect or the failure to consider the issue would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). After a review of the record, we conclude that there was nothing improper with the prosecutor's conduct. Moreover, a curative instruction would have eliminated any possible prejudicial effect and therefore our decision not to review the issue will not result in a miscarriage of justice.

Defendant next argues that he was deprived of due process when the police failed to gather fingerprints from the scene of the crime and process the rape kit collected from the hospital. We disagree. Neither the police nor the people have a duty to exhaust all scientific means available in

collecting evidence. *People v Baber*, 31 Mich App 106, 108; 187 NW2d 508 (1971). Moreover, the record contained sufficient evidence to persuade a rational trier of fact of defendant's guilt beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Here, complainant testified that defendant held a knife at her side and ordered her to position herself on the floor. Defendant placed the knife on a nearby table, then forced sexual intercourse with complainant. Subsequently, defendant, still in possession of the knife, ordered complainant to an upstairs bedroom where he again penetrated her vaginally. Unable to maintain an erection, defendant performed oral sex on complainant against her will. Sufficient evidence existed to establish that defendant committed the crime of first-degree criminal sexual conduct. MCL 750.520b; MSA 28.788(2); *People v Davis*, 101 Mich App 198, 201-204; 300 NW2d 497 (1980).

Lastly, defendant contends that the cumulative effect of the errors at trial resulted in an unfair trial. In view of our resolution of the foregoing issues, this claim is without merit. Accord *People v Sawyer*, 215 Mich App 183, 197; 545 NW2d 6 (1996).

Affirmed.

/s/ Stephen J. Markman  
/s/ Michael J. Smolenski  
/s/ George S. Buth