

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM BEGLEY,

Defendant-Appellant.

UNPUBLISHED

April 4, 1997

No. 188807

Detroit Recorder's Court

LC No. 94-010497

Before: Michael J. Kelly, P.J., and Saad and H.A. Beach,* JJ.

PER CURIAM.

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

I

Defendant first contends that the trial court erred in striking a witness's testimony. We disagree. The decision to admit evidence is within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *People v Davis*, 199 Mich App 502, 516-517; 503 NW2d 457 (1993).

Defendant argues that the trial court prevented him from presenting a defense by striking a witness, Marie Morin's, testimony. We disagree. Defendant sought to introduce the testimony of Morin, who testified that she had seen the victim disappear from work and falsify her time card in the past. Morin's testimony was stricken as irrelevant to the date in question, August 18, 1994.¹ We find no merit to defendant's argument that Morin's testimony should have been admissible to prove that the victim acted in conformity with her past behavior on the date in question. MRE 404(b) precludes a defendant from offering evidence to prove a victim's conformity with character. *People v Catanzarite*, 211 Mich App 573, 579; 536 NW2d 570 (1995). Thus, whether the victim disappeared or falsified her time card on a prior date was not relevant to whether she had done so on the date in question, and

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

further, was not relevant to whether defendant digitally penetrated her. Therefore, we hold that the trial court did not abuse its discretion in striking Morin's testimony.

II

Defendant's second argument is that he was denied a fair and impartial trial because the prosecutor improperly made a "civic duty" argument by using the words "rape" and "raped" in both his opening statement and closing argument. We find no merit to this contention.

The prosecutor stated during opening statement that "criminal sexual conduct in the third degree is what a lot of people used to call rape," and "that is rape, or, in our terminology, criminal sexual conduct in the third degree." Generally, prosecutors are accorded great latitude regarding their arguments and conduct. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). However, prosecutors should not resort to civic duty arguments that appeal to the fears and prejudices of the jury members, and must refrain from denigrating a defendant with intemperate and prejudicial remarks. *Id.*, 282-283. We see no error here in the prosecutor's attempt to define criminal sexual conduct in the third degree for the jury in layman's terms.

Similarly, the prosecutor's comments during closing argument that, "As soon as she answered the phone, I knew that there was something wrong with her, and the little bit that I talked, I thought she was raped," in quoting Herbst's testimony, did not rise to the level of improper civic duty argument. The prosecutor was quoting directly from evidence admitted at trial. Defendant was not denied a fair and impartial trial.

Affirmed.

/s/ Michael J. Kelly
/s/ Henry William Saad
/s/ Harry A. Beach

¹ Defendant was not denied a defense because the testimony of both Battistone and Piskos, who also testified as to the victim's disappearances, was admitted into evidence.