STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GORDON EDWARD GRAINGER, JR.,

Defendant-Appellant.

UNPUBLISHED
May 27, 1997

No. 191447
Schoolcraft Circuit Court
LC No. 95-6056 FH

Before: O'Connell, P.J., and Sawyer and Markman, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions by jury of larceny of property valued at more than $100 (larceny), MCL 750.356; MSA 28.588, unauthorized driving away of an automobile (UDAA), MCL 750.413; MSA 28.645, and criminal sexual conduct in the third degree (CSC III). MCL 750.520d(1)(a); MSA 28.788(4)(1)(a). He was sentenced to concurrent terms of two to five years' imprisonment for the larceny conviction, two to five years' imprisonment for the UDAA conviction, and three to fifteen years' imprisonment for the CSC III conviction. We affirm.

Defendant, with the assistance of his girlfriend, took a handgun, a locksmith kit, and an automobile from her parents' home. He was also accused of having had sexual intercourse with the minor girlfriend.

Defendant first argues that the prosecution presented insufficient evidence to support a conviction of CSC III. In a CSC III prosecution, the prosecution bears the burden of proving that the defendant engaged in sexual penetration with a person between thirteen and sixteen years of age. MCL 750.520d(1)(a); MSA 28.788(4)(1)(a). In the instant case, it is undisputed that the girlfriend was fifteen at the time of intercourse and she testified at trial that penetration occurred. A complainant's testimony alone may be sufficient to prove penetration. *People v Robideau*, 94 Mich App 663, 674; 289 NW2d 846 (1980), aff'd 419 Mich 458; 355 NW2d 592 (1984). The attempted impeachment of the minor does not render this evidence insufficient as it was the jury's responsibility to evaluate her credibility. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Therefore, sufficient evidence was presented to allow a rational trier of fact to find that

the essential elements of CSC III were proven beyond a reasonable doubt. *People v Hampton*, 407 Mich 354, 368; 285 NW2d 284 (1979); *Wolfe*, *supra* at 513-516.

Defendant next argues that trial counsel was ineffective for failing to timely object when the complainant related three statements made by defendant, which statements are alleged to constitute hearsay. Defendant contends that trial counsel was ineffective for failing to object when the complainant testified that defendant had stated that he would use the gun to "kill anyone that got in his way," that he had offered to kill her parents, and that he suggested that she "act dumb in court."

As set forth in MRE 801(d)(2), "a statement is not hearsay if . . . [t]he statement is offered against a party and is (A) his own statement . . . ." The first and second statements set forth above fall within MRE 801(d)(2) because they were defendant's own statements and pertained to defendant's motive in taking the handgun, meaning they were offered against him. The third statement, that the complainant act "dumb" in court, was also defendant's own statement, and was offered against him in the sense that it suggested that he was requesting the complainant to perjure herself, or, more specifically, that the complainant's truthful testimony would incriminate him. Therefore, these statements did not constitute hearsay. The failure to make a groundless objection does not constitute ineffective assistance of counsel. See *People v Rodriguez*, 212 Mich App 351, 356; 538 NW2d 42 (1995).

Defendant also asserts that the challenged statements were objectionable on other grounds, but these issues were not properly presented on appeal because they were not set forth in defendant's statement of the questions presented, as required by MCR 7.212(C)(5). *Lansing v Hartsuff*, 213 Mich App 338, 351; 539 NW2d 781 (1995). In any event, given the fact that the complainant offered direct testimony supporting all the elements of all the crimes of which defendant was convicted, there was no reasonable probability that the exclusion of the contested testimony would have altered the result at trial. Therefore, even had these statements been admitted improperly, the failure of trial counsel to object to their admission would not constitute ineffective assistance of counsel. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994).

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Stephen J. Markman