

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY ROBERT OWENS,

Defendant-Appellant.

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UNPUBLISHED

November 14, 1997

No. 196212

Monroe Circuit Court

LC No. 96-027272-FC

Before: Saad, P.J., and O'Connell and Matuzak,\* JJ..

PER CURIAM.

Defendant was convicted by a jury of third-degree criminal sexual conduct, MCL 750.520d; MSA 28.788(4). Defendant was sentenced to ten to fifteen years' imprisonment for his conviction. Defendant appeals as of right, and we affirm.

Defendant alleges several evidentiary errors. First, defendant contends that the trial court abused its discretion in not allowing defendant to question the victim regarding her past sexual history with defendant. Defendant claims that such questioning is allowed under MRE 404(a)(3), and was critical to support his theory of the case (that the bondage that occurred on the night in question was "normal" between the parties). We disagree. Despite defendant's failure to comply with the notice provisions of MCL 750.520j(2); MSA 28.788(10)(2), the trial court considered defendant's attempt to elicit such testimony from the victim at a bench conference. After doing so, the court found that, because the testimony was not relevant, it would not be allowed. Because the record indicates that defendant claimed that no bondage occurred on the night in question, and that the sexual encounter was consensual (contrary to defendant's claim on appeal), we agree that the testimony was not relevant. MRE 401; *People v Brooks*, 453 Mich 511, 517; 557 NW2d 106 (1996). Therefore we conclude that the trial court did not abuse its discretion in limiting defendant's questioning of the victim. *People v McAlister*, 203 Mich App 495, 505; 513 NW2d 431 (1994).

Defendant's next evidentiary claim is that the trial court abused its discretion in refusing to allow defendant to impeach the victim with evidence of her incredible character and past criminal drug

conviction. We disagree. The trial court properly found that a statement the victim made to a former attorney was irrelevant, the record does not support defendant's claim that he was not allowed to question a state trooper regarding statements the victim previously made, and, pursuant to MRE 609, the court properly prevented defendant from introducing evidence of the victim's drug conviction. MRE 401; MRE 403; MRE 609; *Brooks, supra* at 517; *People v Davis*, 199 Mich App 502, 517; 503 NW2d 457 (1993). Therefore, we conclude that the trial court did not abuse its discretion in limiting the admission of the evidence. *McAlister, supra* at 505.

Defendant's third evidentiary claim is that the trial court abused its discretion in refusing to allow defendant to impeach two witnesses for the prosecution. We disagree. The record does not support defendant's contention regarding the first witness, where it was agreed between the parties that the witness' testimony would be stricken from the record. Defendant cannot claim error on appeal due to something he agreed to below. See *People v Buck*, 197 Mich App 404, 423; 496 NW2d 321 (1992), rev'd in part on other grounds sub nom *People v Holcomb*, 444 Mich 853; 508 NW2d 502 (1993). We also find that the record does not support defendant's contention regarding the second witness, where the testimony sought was not contrary to the witness' statement, and was thus irrelevant. See *Brooks, supra* at 517. Therefore, we conclude that the trial court did not abuse its discretion in limiting this witness' testimony. *McAlister, supra* at 505.

Defendant's final evidentiary claim is that the trial court abused its discretion in allowing the prosecution to present testimony from an expert witness regarding the battered woman syndrome. We disagree. The record indicates that the trial court allowed the expert to testify very briefly and in very general terms regarding the battered woman syndrome, in response to a love letter written by the victim to defendant shortly before the incident. Defendant admitted the letter into evidence to show that the victim had strong feelings for defendant and was very dependent upon him. Accordingly, because the testimony was limited and provided to explain why the victim would write such a letter, we conclude that the trial court did not abuse its discretion in allowing this testimony. See *People v Christel*, 449 Mich 578, 600; 537 NW2d 194 (1995).

Defendant next argues that the trial court erred in instructing the deadlocked jury pursuant to CJI2d 3.12, and coerced the jury into reaching a verdict. We disagree. Because the record indicates that the court read the CJI2d 3.12 verbatim, accommodated the individual and collective needs of the jury, provided the jury with food and breaks, did not force the jury to deliberate past a reasonable hour, and indicated its deliberation schedule, we conclude that the court properly instructed the jury and did not coerce a verdict. See *People v Cadle*, 204 Mich App 646, 657-658; 516 NW2d 520 (1994); *People v Gaydosh*, 203 Mich App 235, 237; 512 NW2d 65 (1994).

Affirmed.

/s/ Henry William Saad  
/s/ Peter D. O'Connell  
/s/ Michael J. Matuzak