

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS ELDON FULLER,

Defendant-Appellant.

UNPUBLISHED

May 24, 2005

No. 252365

Clinton Circuit Court

LC No. 03-007339-FC

Before: Murphy, P.J., and White and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from his jury conviction of first-degree criminal sexual conduct, MCL 750.520b(1)(a). The trial court sentenced defendant to five to fifteen years' imprisonment. We affirm.

Defendant contends that he was denied a fair trial when the trial court instructed his wife, who testified on his behalf, not to argue with the prosecutor. Because defendant failed to object to the trial court's comments, this Court's review is limited to plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 761-762; 597 NW2d 130 (1999). A defendant's substantial rights are affected if the error affects the outcome of the proceedings. *Id.* at 761-762. When reviewing whether the trial court's comments deprived the defendant of a fair and impartial trial, this Court reviews such comments in their entirety to determine if they were likely to unduly influence the jury. *People v Paquette*, 214 Mich App 336, 340-341; 543 NW2d 342 (1995).

The complainant, a friend of defendant's daughter, spent the night at defendant's home. She testified that defendant's wife, Mrs. Fuller, told the two girls to go upstairs to sleep. The complainant was asked if she and defendant's daughter made any noise before going to sleep, and she stated, "It's possible, but I don't remember it." The complainant was further asked if she remembered Mrs. Fuller coming up to the bedroom and telling them to be quiet, and she stated, "No." However, Mrs. Fuller testified that the girls were jumping up and down and were laughing. According to Mrs. Fuller, she had to tell the girls to be quiet three times. Mrs. Fuller was then asked if at any time during the night she talked to the complainant, and she responded, "No, not after I told them to go to sleep for the last time."

On cross-examination, Mrs. Fuller was asked:

Q. On the night in question, you didn't go into the bedroom after the girls went up there, correct?

A. Only to go and tell them to go to bed and get to sleep those three times.

Q. I thought Mr. Bellgowan asked you if you went to the room and you told him that you didn't go in the room.

A. I thought he was asking after those incidents. During the night, is what he asked me.

Q. Well, that [would] be during the night, wouldn't it?

A. During the -- when they were sleeping, is what I was assuming when he asked me that question.

Q. Okay. So, after the last time you supposedly went up there, then, after that, that's when you didn't go?

A. Excuse me; not supposedly. After the last time I went up there, yes, sir.

At this point in Mrs. Fuller's testimony, the court stated the following:

The court: Ma'am, it doesn't pay to argue with counsel. He is just --

Mrs. Fuller: I am not trying -- I just don't want to --

The court: He asks a question, Ma'am. If you could just try to answer them, we will be all set.

Mrs. Fuller: Okay.

We find that the trial court's comments were not inappropriate. While Mrs. Fuller testified that she went to her daughter's room three times to tell the girls to be quiet the night in question, she also testified that she did not talk to the complainant during the night. Because Mrs. Fuller's testimony on direct examination was somewhat confusing, the prosecutor properly sought clarification. Her response to the prosecutor's question, however, was somewhat argumentative. Thus, we conclude that the trial court did not err in instructing Mrs. Fuller to answer the prosecutor's question.

Affirmed.

/s/ William B. Murphy

/s/ Helene N. White

/s/ Michael R. Smolenski