

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

DONALD ROBERT MARSHALL,

Defendant-Appellant.

UNPUBLISHED

October 18, 2005

No. 255573

Allegan Circuit Court

LC No. 03-013219-FC

Before: Talbot, P.J., and White and Wilder, JJ.

MEMORANDUM.

Defendant was convicted, following a jury trial, of one count of first-degree criminal sexual conduct (CSC), MCL 750.520b, and one count of second-degree CSC, MCL 750.520c(1)(a) for sexually assaulting his then ten-year-old step-granddaughter. He was sentenced as a fourth-degree habitual offender to concurrent terms of 30 to 60 years' imprisonment for his first-degree CSC conviction and 14 to 30 years' imprisonment for his second-degree CSC conviction.¹ Defendant appeals as of right. We affirm.

Defendant asserts that he was deprived of a fair trial by the prosecutor's statement during closing that "reasonable doubt doesn't mean beyond a shadow of a doubt, it doesn't mean beyond any doubt, *and it certainly doesn't mean that you give the defendant the benefit of the doubt.*" [Emphasis added.]

This claim of prosecutorial misconduct is not preserved and, therefore, is reviewed for plain error affecting substantial rights. *People v Schutte*, 240 Mich App 713, 720; 613 NW2d 370 (2000), overruled in part on other grounds *Crawford v Washington*, 541 US 36; 124 S Ct 1354; 158 L Ed 2d 177 (2004), citing *People v Carines*, 460 Mich 750, 763; 597 NW2d 130

¹ Defendant's brief on appeal states that he was sentenced to concurrent fourteen to thirty year terms of imprisonment. The original judgment of sentence so stated, but was corrected by the amended judgment of sentence, entered on May 12, 2004, which reflects the trial court's sentence as articulated at the sentencing hearing: thirty to sixty years' imprisonment for the first-degree CSC conviction, and fourteen to thirty years' imprisonment for the second-degree CSC conviction.

(1999). After examining the record as a whole, we conclude that defendant's substantial rights were not affected.

The trial court instructed the jury that the trial court, and not the attorneys, instructs the jury as to the relevant law and that the jury is to disregard statements made by the attorneys that contradict the trial court's instructions. The trial court further instructed the jury that defendant was presumed innocent and properly explained the definition of reasonable doubt. Therefore, the jury received the proper instruction concerning reasonable doubt and defendant has failed to show plain error affecting his substantial rights.

Defendant's claim that he was deprived of effective assistance of counsel because his trial counsel failed to object to the prosecutor's remarks fails because defendant can not show the requisite prejudice.

Affirmed.

/s/ Michael J. Talbot
/s/ Helene N. White
/s/ Kurtis T. Wilder