

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CEDRIC L. COX,

Defendant-Appellant.

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UNPUBLISHED

March 12, 1999

No. 207960

Recorder's Court

LC No. 96-008939

Before: Markman, P.J., and Jansen and J.B.Sullivan,\* J.J.

PER CURIAM.

Following a jury trial, defendant was convicted of third-degree criminal sexual conduct, MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). The trial court sentenced defendant to six to fifteen years in prison. He now appeals as of right. We affirm.

Defendant first argues that insufficient evidence was presented at trial from which the jury could find him guilty beyond a reasonable doubt. When examining the sufficiency of the evidence, this Court must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992); *People v Fetterley*, 229 Mich App 511, 515; 583 NW2d 199 (1998). Circumstantial evidence and reasonable inferences arising from the evidence may satisfy proof of the elements of an offense. *Id.*

A person is guilty of criminal sexual conduct in the third degree if he engages in sexual penetration with another person and force or coercion is used to accomplish the sexual penetration. MCL 750.520d(1)(b); MSA 28.788(4)(1)(b). There was ample evidence presented from which the jury could have found that defendant used force or coercion to accomplish sexual penetration. The victim testified that defendant grabbed her jacket collar, pulled a gun from his pocket, and told her that he was going to rape her. She testified that she walked along with him and obediently climbed to the top of an overpass bridge without screaming or attempting to run because she was afraid he would kill

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

her if she did. She further testified that she followed his directions by lying down on her jacket and allowing him to climb on top of her and rape her because she feared for her life.

The victim's testimony was corroborated by the results of the DNA analysis, as well as by the testimony of each of the prosecution witnesses, including the responding police officer and the treating physician. Her testimony was also corroborated by that of defendant himself, who agreed with most of the facts as she presented them, with one key difference: whether or not the sex was consensual. It is the sole province of the jury to determine questions of fact and assess the credibility of witnesses. *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998). Thus, we find that the evidence was sufficient to support the jury's conclusion that the victim was telling the truth and that defendant was not, and that defendant had accomplished sexual penetration through the use of force or coercion.

Defendant next argues that the trial court abused its discretion in ruling that the prosecutor could impeach defendant's testimony with his prior inconsistent statement to police that he was a member of a gang. The decision whether evidence is admissible is within the trial court's discretion and should only be reversed where there is a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made. *People v Warren*, 228 Mich App 336, 341; 578 NW2d 692 (1998).

It must be initially noted that defendant has completely mischaracterized the trial court's ruling as being based on MRE 609. Defendant testified on direct examination that the victim had invited him to go to her mother's house to have intercourse, but that he had refused because he was afraid that her mother would come home. However, following his arrest, defendant had indicated to police that the reason he did not go to the victim's home was that "I'm in a gang and I can't go over [to that street]." Defendant in his motion in limine at trial objected to the admission of the prior statement on the basis of MRE 403, and his argument on appeal regarding Rule 609 was not preserved for our review. Moreover, Rule 609 has absolutely no application to the issue.

Testimony is admissible for purposes of impeachment to show previous contradictory or inconsistent statements on matters material to the issues at bar. MRE 613; *People v Claybon*, 124 Mich App 385, 399; 335 NW2d 493 (1983). While MRE 403 provides that relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence," we do not believe that the court abused its discretion in choosing not to exclude the statement.

Affirmed.

/s/ Stephen J. Markman  
/s/ Kathleen Jansen  
/s/ Joseph B. Sullivan