

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER E. MORSE,

Defendant-Appellant.

UNPUBLISHED

July 24, 2003

No. 239022

Oakland Circuit Court

LC No. 01-176326-FC

Before: Zahra, P.J., and Talbot and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for second-degree criminal sexual conduct, MCL 750.520c. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant asserts that he was denied the effective assistance of trial counsel, who failed to object to the admission of hearsay evidence, and offered damaging character evidence. To establish an ineffective assistance of counsel claim, defendant first must show that counsel's performance was below an objective standard of reasonableness under prevailing professional norms. The defendant must overcome a strong presumption that counsel's actions constituted sound trial strategy. Second, the defendant must show that there is a reasonable probability that, but for counsel's error, the result of the proceeding would have been different. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Defendant failed to overcome the presumption that counsel's actions were part of a sound trial strategy. Counsel was able to use the hearsay evidence to establish inconsistencies in the testimony of the prosecutor's witnesses. The bad acts evidence was used to challenge the credibility of key prosecution witnesses when the person allegedly involved in the bad act with defendant denied that it occurred.

Defendant also argues that he was denied a fair trial by prosecutorial misconduct. Defendant failed to object to the remarks, and this Court will review the issue for plain error. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001). Defendant was not prejudiced by the prosecutor's remarks about penetration where he was acquitted of the first-degree criminal sexual conduct charge. The comment about the origin of complainant's sexual knowledge did not improperly shift the burden of proof to defendant. *People v Reid*, 233 Mich App 457, 477; 592 NW2d 767 (1999). Comments about the confusing nature of defense

counsel's questions and the diversion of the jury's attention did not improperly denigrate defense counsel. *People v Kennebrew*, 220 Mich App 601, 607; 560 NW2d 354 (1996).

Affirmed.

/s/ Brian K. Zahra
/s/ Michael J. Talbot
/s/ Donald S. Owens