

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE SCOTT BELCHER,

Defendant-Appellant.

UNPUBLISHED

December 28, 2010

No. 293599

Kent Circuit Court

LC No. 08-005687-FC

Before: MURRAY, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction for first-degree criminal sexual conduct, MCL 750.520b(1)(d); third-degree criminal sexual conduct, MCL 750.520d(1)(b); aggravated domestic assault, MCL 750.81a(2); and unlawful imprisonment, MCL 750.349b. The trial court sentenced defendant to 45 to 90 years' imprisonment for first-degree criminal sexual conduct, 20 to 30 years' imprisonment for third-degree criminal sexual conduct, credit for 434 days served with no additional jail time for aggravated domestic assault, and 10 to 30 years' imprisonment for unlawful imprisonment. The prosecution's theory at trial was defendant aided and abetted the principal, Roderick Marzette, in the commission of first-degree criminal sexual conduct and acted independently on all other offenses. We affirm.

The primary argument put forward in defendant's principal brief on appeal is that, with respect to his conviction of third-degree criminal sexual conduct, the victim testified to an impossibility. Specifically, defendant argues that the victim testified that defendant inserted the bottle before she was raped, which defendant claims is impossible given the DNA of the other rapist being found on the bottle. As the prosecutor points out, this argument only goes to the credibility of the victim, which was for the jury to consider. Apparently the jury found the victim's testimony credible, and as discussed below, there was sufficient evidence to support his convictions of all these crimes.

Though defendant's principal brief on appeal contains only a perfunctory argument challenging the sufficiency of evidence on all his convictions, we will nevertheless address these issues. We review challenges to the sufficiency of the evidence *de novo*. *People v Schumacher*, 276 Mich App 165, 167; 740 NW2d 534 (2007). However, the reviewing court must "view the evidence in a light most favorable to the prosecution and determine whether any 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 (1992), amended 441 Mich 1201

(1992). This standard is deferential and requires that we “draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Additionally, “[c]ircumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.” *People v Allen*, 201 Mich App 98, 100; 505 NW2d 869 (1993).

Under MCL 750.520b(1)(d), the prosecution must prove defendant aided and abetted the sexual penetration of another through the use of force or coercion. MCL 750.520b(1)(d)(ii); *People v Vaughn*, 186 Mich App 376, 380-381; 465 NW2d 365 (1990). Among other things, force or coercion may take the form of physical force or violence, or threats of force or violence where the victim believes the actor has the present ability to execute those threats. MCL 750.520b(1)(f). “[F]orce or coercion is not limited to physical violence but is instead determined in light of all the circumstances.” *People v Brown*, 197 Mich App 448, 450; 495 NW2d 812 (1992); MCL 750.520b(1)(f). To be guilty of a predicate offense under the theory of aiding and abetting, the prosecution must prove “(1) the crime charged was committed by the defendant or some other person, (2) the defendant performed acts or gave encouragement that assisted the commission of the crime, and (3) the defendant intended the commission of the crime or had knowledge that the principal intended its commission at the time he gave aid and encouragement.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). The amount of aid or assistance given is immaterial as long as it had the effect of inducing or encouraging the crime. *People v Palmer*, 392 Mich 370, 378; 220 NW2d 393 (1974).

On May 14, 2008, defendant and the victim argued about \$50 that was allegedly stolen from defendant by the victim’s son. Defendant was upset and left the victim’s house. Later that day, he returned with Marzette, and took the victim and Marzette to Minnie McMurry’s house. Once inside, defendant locked the front door and kept the keys. The door could not be unlocked from the inside without the keys. Defendant then threatened the victim by asking her “if you had one last phone call to make, who would you call?” He subsequently made her remove her clothes and told her to go upstairs where Marzette was waiting in a bedroom. Defendant followed the victim into the bedroom, watched her get on the bed on her hands and knees, and put a beer bottle in her vagina. Later, Marzette penetrated the victim with his penis. Defendant instructed the victim to look Marzette in the eyes during the assault. While this sexual penetration was occurring, the victim did not try to get away because she was scared of what defendant would do to her. When Marzette was finished, defendant punched the victim, strangled her with a radio cord and beat her with wire hangers.

Viewing the evidence in a light most favorable to the prosecution, a reasonable jury could find defendant guilty beyond a reasonable doubt of first-degree criminal sexual conduct. Defendant facilitated the sexual assault by bringing the victim and Marzette together with the intent that the victim be sexually assaulted, put the victim in a position where she felt she was unable to help herself, and encouraged the sexual assault by instructing the victim to look at Marzette during the assault. “Intent, like any other fact, may be proven indirectly by inference from the conduct of the accused and surrounding circumstances from which it logically and reasonably follows.” *People v Lawton*, 196 Mich App 341, 349; 492 NW2d 810 (1992). In light of all the circumstances, these facts support a finding that defendant assisted or encouraged Marzette’s penetration through the use of force or coercion. Therefore, the prosecution presented sufficient evidence to convict defendant of first-degree criminal sexual conduct.

The prosecution also presented sufficient evidence to support a finding that defendant committed third-degree criminal sexual conduct. Under MCL 750.520d(1)(b), the prosecution must prove defendant sexually penetrated another through the use of force or coercion. MCL 750.520d(1)(b); *People v Hutner*, 209 Mich App 280, 282-283; 530 NW2d 174 (1995). The victim testified that defendant made her go upstairs into a bedroom naked. While she was on hands and knees on a bed, he put a beer bottle into her vagina. She testified she did not want defendant to do this and that he would not take it out when she said it was hurting her. The act of putting a beer bottle in the victim's vagina is sexual penetration within the meaning of MCL 750.520d(1)(b). *People v Wilkens*, 267 Mich App 728, 738; 705 NW2d 728 (2005). The same facts supporting a finding of force or coercion with respect to the first-degree CSC charge support the use of force or coercion with respect to the third-degree CSC charge. Viewed in a light most favorable to the prosecution, the evidence supported a finding beyond a reasonable doubt that defendant committed third-degree criminal sexual conduct.

The prosecution also presented sufficient evidence to support defendant's conviction of aggravated domestic assault. Under MCL 750.81a(2), the prosecution must prove that defendant assaulted or assaulted and battered an individual with whom he has a dating relationship, without a weapon and inflicted serious or aggravated injury. A dating relationship, "means frequent, intimate associations primarily characterized by the expectation of affectional involvement. This term does not include a casual relationship or an ordinary fraternization between 2 individuals in a business or social context." MCL 750.81a(6). "Aggravated" has been defined as a "substantial bodily (physical) injury or injury that necessitated immediate medical treatment or caused disfigurement, impairment of health or impairment of any bodily part." *People v Brown*, 97 Mich App 606, 611; 296 NW2d 121 (1980). After defendant placed a beer bottle in the victim, whom he referred to as his girlfriend at trial, and watched Marzette penetrate her, defendant punched the victim and beat her with wire hangers on her buttocks and back. He also choked her with the cord to a radio. Defendant also forced the victim to shave her pubic hair with a razor and an electric razor. Shannon Brauning, the sexual assault examiner for the YWCA, testified that the victim had bruising on her face, scratches on her buttocks and back, and abrasions and a laceration on her pelvis. On this record, the prosecution presented sufficient evidence to support a finding beyond a reasonable doubt that defendant committed aggravated domestic assault.

Last, the prosecution also presented sufficient evidence to convict defendant of unlawful imprisonment. To be convicted of unlawful imprisonment under MCL 750.349b, the prosecution must prove that a person knowingly restrained another person to facilitate the commission of another felony or to facilitate flight after the commission of another felony. "'Restraining' means to forcibly restrict a person's movements or to forcibly confine the person so as to interfere with that person's liberty without that person's consent or without lawful authority. The restraint does not have to exist for any particular length of time and may be related or incidental to the commission of other criminal acts." MCL 750.349b(3)(a). The victim testified that when she was in McMurtry's house with defendant and Marzette, she was very scared and thought defendant was going to do something bad to her. She also testified that defendant had the keys to the house and that he locked the door they entered. McMurtry testified that the door can be locked from the inside and cannot be unlocked without the keys. Based on these facts, the victim was restrained and her liberty to exit the house under the circumstances was restricted. Viewed in a light most favorable to the prosecution, a reasonable jury could convict defendant beyond a reasonable doubt of unlawful imprisonment based on the restraint

imposed on the victim and that defendant committed third-degree criminal sexual conduct on the victim while she was restrained.

Defendant raises the issues of juror misconduct and ineffective assistance of counsel in his Standard 4 Brief. Defendant states the prosecuting attorney at trial called defense counsel and indicated a juror said defendant was “winking, smiling, and waving” at her during trial. Defendant denies this occurred. According to defendant, defense counsel told defendant he would bring the matter to the court’s attention, but never did. Defendant argues the juror’s alleged false statement about his trial conduct violates his right to an unbiased jury. Additionally, defendant argues that defense counsel’s alleged failure to inform the court of the juror’s statement constitutes ineffective assistance of counsel.

Defendant’s claim of juror misconduct was not raised before the trial court, and is reviewed for plain error requiring reversal. *Carines*, 460 Mich at 763. On appeal, defendant fails to cite to the record to support his claim that the described events took place. Nothing in the record verifies defendant’s claims, and therefore, defendant has not met his burden of demonstrating the existence of a plain error affecting his substantial rights. *Id.*

Similarly, defendant’s claim of ineffective assistance of counsel also fails, as he has not established any facts to support his claim. *People v Jordan*, 275 Mich App 659, 667; 739 NW2d 706 (2007). No evidence exists in the record that supports a finding that defense counsel’s representation fell below an objective standard of reasonableness. *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007).

Affirmed.

/s/ Christopher M. Murray
/s/ Joel P. Hoekstra
/s/ Deborah A. Servitto