

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT THOMAS DOYLE,

Defendant-Appellant.

UNPUBLISHED

May 25, 2001

No. 222980

Oakland Circuit Court

LC No. 98-163161-FC

Before: Neff, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(b); MSA 28.788(2)(1)(b), and one count of second-degree criminal sexual conduct, MCL 750.520c(1)(b); MSA 28.788(3)(1)(b). Defendant was sentenced to concurrent terms of 4½ to 20 years' imprisonment for the first-degree criminal sexual conduct convictions and three to fifteen years' imprisonment for the second-degree criminal sexual conduct conviction. He appeals as of right. We affirm.

Defendant first claims that the trial court abused its discretion by permitting the introduction of unclear evidence implying that the complainant (defendant's stepdaughter) was threatened by defendant and her mother. Although we review a trial court's evidentiary rulings for an abuse of discretion, *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999), we find that defendant has not established record support for his claim that the trial court made an evidentiary ruling to admit evidence of threats, express or implied, that would be subjected to this review. The record shows only that the prosecutor attempted to lay a foundation for Detective Morin to give testimony on what the complainant told him was stated by her mother outside the courtroom at a prior proceeding and an evidentiary ruling of the trial court to sustain a defense objection to that testimony.

Further, we are unpersuaded that the propensity concerns of MRE 404(b) were implicated by Detective Morin's testimony on the complainant's demeanor outside the courtroom. *People v Crawford*, 458 Mich 376, 390; 582 NW2d 785 (1998). The fact that the complainant's mother gave earlier, unresponsive testimony about false accusations being made against her during questioning by both the prosecutor and defense counsel affords defendant no basis for relief. Defendant has not met his burden to show any testimony of the complainant's mother that

constituted plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Defendant next claims that the prosecutor improperly vouched for the complainant's credibility and "testified" when questioning the complainant's mother. We find that defendant preserved his claim that the prosecutor "testified" by objecting on this ground at trial. We also find merit in defendant's claim that the prosecutor's question was improper inasmuch as there was no evidence to support the prosecutor's statement on what she was told by the complainant. *People v Schutte*, 240 Mich App 713, 721; 613 NW2d 370 (2000). However, the trial court's ruling to sustain the objection, coupled with the jury instruction that the lawyers' questions were not evidence, was sufficient to cure any prejudice. *People v Bahoda*, 448 Mich 261, 281; 531 NW2d 659 (1995). We find that defendant's claim that the prosecutor's question also vouched for the complainant's credibility was not preserved for appeal because defendant did not object at trial on this ground. *People v Maleski*, 220 Mich App 518, 523; 560 NW2d 71 (1996). Further, defendant has not shown plain error affecting his substantial rights. *Schutte*, *supra* at 720-722.

Defendant also claims that the prosecutor improperly attempted to have Detective Morin put a stamp of credibility on the complainant's prior statements during direct and redirect examination. Because defendant did not object at trial on this ground and has not shown plain error affecting his substantial rights, we find no basis for relief. *Schutte*, *supra* at 720. The challenged questions do not, when examined in context, reflect attempts to have Detective Morin comment on credibility. Rather, they reflect attempts to respond to an issue raised in the complainant's mother's testimony on whether the complainant made prior statements that she lied and defense counsel's own use of preliminary examination testimony when cross-examining Detective Morin. The challenged questions did not deprive defendant of a fair trial. *People v Green*, 228 Mich App 684, 693; 580 NW2d 444 (1998).

Affirmed.

/s/ Janet T. Neff
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey