

STATE OF MICHIGAN  
COURT OF APPEALS

DEFENDANT'S COPY

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOEL NATHAN DUFRESNE,

Defendant-Appellant.

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UNPUBLISHED

October 14, 2008

No. 273407

Emmet Circuit Court

LC No. 06-002597-FC

Before: Hoekstra, P.J., and Cavanagh and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right his convictions following a jury trial of three counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(f) (using force or causing injury), and six counts of third-degree criminal sexual conduct (CSC III), MCL 750.520d(1)(f) (using force or coercion).<sup>1</sup> We affirm.

Defendant's convictions arose out of multiple forced sexual acts with his former girlfriend. The girlfriend testified that defendant threatened to kill her, her daughters, and her parents if she reported the acts to law enforcement authorities. She further testified that defendant told her that he would take their son away from her if she refused to participate in the sexual acts.

Defendant first argues that his constitutional right to a fair trial was violated when two police officers testified that he invoked his right to counsel and his right to remain silent. We review this preserved claim of error to determine whether any constitutional error occurred; if an error occurred, we then determine whether the beneficiary of the error has established that the error was harmless beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

A defendant's exercise of his *Miranda*<sup>2</sup> rights may not be used as evidence at trial. *Doyle v Ohio*, 426 US 610, 619; 96 S Ct 2240; 49 L Ed 2d 91 (1976); *People v Dennis*, 464 Mich 567,

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<sup>1</sup> The jury acquitted defendant on three counts of CSC I.

<sup>2</sup> *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v Washington*, 466 US 668, 694; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

The record demonstrates that the result of the proceeding would have been the same regardless of the reference to the Chicago murder. The prosecutor presented evidence on each element of each offense, and the sole exculpatory testimony came from defendant. The trial court found at the *Ginther* hearing that defendant's testimony lacked credibility. We defer to the trial court's credibility determinations, *People v Vaughn*, 186 Mich App 376, 380; 465 NW2d 365 (1990), and further note that defendant's coarse, irrational, and often rambling responses would likely undermine his credibility with the jurors. In sum, defendant cannot demonstrate any probability that the result of the trial would have been different had his counsel objected to the challenged testimony.

Defendant presents similar challenges to the testimony of his cellmate regarding defendant's demeanor and the cellmate's concern for his own safety, as well as to other police testimony about the scope of the investigation. We need not address these challenges in detail, other than to state that the challenged testimony was admissible. Given that the testimony was admissible, the prosecutor cannot be deemed to have committed misconduct in eliciting it. See *Dobek, supra* at 66. Moreover, defendant's counsel cannot be deemed ineffective for failing to object to admissible testimony because any objection would have been futile. *Fike, supra* 182-183.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ Mark J. Cavanagh  
/s/ Brian K. Zahra