

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARCUS DUANE HINTON,

Defendant-Appellant.

UNPUBLISHED
February 12, 2013

No. 308019
Ingham Circuit Court
LC No. 11-000255-FC

Before: JANSEN, P.J., and WHITBECK and BORRELLO, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial convictions of two counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1), torture, MCL 750.85, unlawful imprisonment, MCL 750.349b, assault with intent to do great bodily harm less than murder (AWIGBH), MCL 750.84, and felonious assault, MCL 750.82. Defendant was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of 585 months to 75 years for the CSC I and torture convictions, 145 to 435 months for the unlawful imprisonment conviction, 98 to 294 months for the AWIGBH conviction, and 39 to 180 months for the felonious assault conviction. We affirm.

On the night before the incident, the victim was at her sister's residence and had been drinking alcohol and smoking crack cocaine and marijuana. She also had sexual intercourse with an unidentified man. The following day, she called defendant, whom she dated and with whom she lived, to come pick her up. When the couple got home, defendant stopped the victim from showering. He grabbed a cord and started whipping the victim while she was naked. He questioned her about the identity of the man with whom she had sex. When he did not like her response, he hit her with the cord.

The victim testified that defendant then made her perform oral sex on him while he held a knife to her throat and threatened to "mess [her] up." She said that defendant told her to swallow his ejaculate and that he urinated in her mouth and on her face. She also claimed that he told her to put a beer bottle in her vagina. At some point, the victim asked to use the bathroom. Defendant forced her to defecate on the floor in the bedroom. Defendant continued to ask the victim questions and hit her with the cord. This went on all night and into the next day. The victim testified that defendant told her he was not going to kill her, but "he was going to get it close enough where [she was] going to wish [she] was dead." According to the victim,

defendant then suddenly stopped and decided to go get coffee and cigarettes. Before leaving, he tied the victim to the bed and gagged her. Once he left, the victim was able to free herself and escape.

Defendant argues that the trial court erred by permitting expert testimony concerning battered-woman syndrome during the prosecution's case-in-chief because the defense did not make an issue of the victim's post-incident behavior of conversing with defendant by telephone and letters. Therefore, he argues, the expert's testimony served no proper purpose and was used simply to bolster the victim's credibility. We disagree.

We review for an abuse of discretion the trial court's decision to admit or exclude evidence, including expert testimony. *People v Dobek*, 274 Mich App 58, 93; 732 NW2d 546 (2007).

Expert testimony is admissible if "the court determines that scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue . . ." MRE 702. But before the trial court admits expert testimony, the court must determine that the evidence is "from a recognized discipline, relevant and helpful to the trier of fact, and presented by a qualified witness." *People v Daoust*, 228 Mich App 1, 9-10; 577 NW2d 179 (1998), overruled on other grounds by *People v Miller*, 482 Mich 540; 759 NW2d 850 (2008).

In *People v Christel*, 449 Mich 578, 591; 537 NW2d 194 (1995), our Supreme Court determined that expert testimony concerning battered-woman syndrome may be admissible "when appropriate, [to] explain the generalities of characteristics of the syndrome." The *Christel* Court observed that, "when a witness' actions or responses are incomprehensible to average people," expert testimony is generally needed. *Id.* at 592. However, the testimony must be "limited to a description of the uniqueness of a specific behavior brought out at trial." *Id.* at 591 (citation omitted). Moreover, the expert may not offer an opinion about whether the victim is a battered woman, whether the defendant is a batterer, whether the defendant is guilty, or whether the victim is being truthful. *Id.* The testimony must also meet the threshold requirements of relevancy and helpfulness. *Id.* at 592.

Defendant argues that because the defense never placed in issue the victim's post-incident behavior and continuing contact with defendant, the expert testimony was improper and only served to bolster the victim's credibility.

The victim accepted several calls from defendant while he was in jail. She also wrote and exchanged letters with defendant after the incident. She testified that, after the incident, she continued to love defendant and continued to care about him. Such post-incident behavior is the type of behavior discussed in *Christel*. Because an average person may not understand why the victim of a severe beating and criminal sexual conduct would continue to have contact with the alleged perpetrator, the expert testimony was properly admitted in the prosecution's case in chief. *Christel*, 449 Mich at 592-593.

Defendant suggests that expert testimony concerning battered-woman syndrome must be raised by the defense—not by the prosecution. But the *Christel* Court explained that such

testimony may be permissible to explain the “uniqueness of a specific behavior brought out at trial,” and specifically observed that it may be introduced “in the prosecution’s case-in-chief[.]” *Id.* at 591, 594. Indeed, *Christel* does not stand for the proposition that the defense must be the party to introduce the evidence. Defendant cites *People v Beckley*, 434 Mich 691; 456 NW2d 391 (1990), to support his proposition. However, *Beckley* dealt with evidence of child sexual abuse. Although both cases addressed types of syndrome testimony, *Christel* is directly applicable and does not support defendant’s position.

In short, to show that defendant had tried to manipulate the victim from jail, the prosecution desired to introduce evidence concerning the telephone calls and the victim’s other post-incident contact with him.¹ However, the prosecution also found it necessary to explain to the jury why the victim would have remained in contact with defendant after the assault. This was the primary purpose behind the prosecution’s introduction of the expert testimony. In other words, the expert testimony was not introduced to bolster the victim’s credibility, but rather to place in context the evidence concerning the telephone calls and the victim’s other post-incident contacts. It was properly offered by the prosecution as foundation evidence for understanding the victim’s behavior. See *State v Haines*, 112 Ohio St 3d 393, 403; 860 NE2d 91 (2006).

The expert testified that there are a variety of reasons why a victim might stay in contact with an abuser after an assault. He testified that he had never talked to the victim and that he was testifying about domestic violence in general—not about any specific person such as the victim or defendant in this case. The expert offered no testimony as to whether the victim was actually battered, whether defendant was a batterer, whether defendant was guilty, or whether the victim was telling the truth. See *Christel*, 449 Mich at 591.

The expert’s testimony was relevant and helpful to explain to the jury why the victim might have remained in contact with defendant. It put the prosecution’s other evidence in an understandable context. The victim’s post-incident contact with defendant was brought out during trial to show that defendant was attempting to manipulate her. The expert’s testimony served the proper purpose of explaining the victim’s behavior. The trial court did not abuse its discretion by allowing the expert testimony. We perceive no error requiring reversal.

Affirmed.

/s/ Kathleen Jansen
/s/ William C. Whitbeck
/s/ Stephen L. Borrello

¹ During the telephone calls, defendant talked about leaving Lansing with the victim so she would not have to go to court and testify. Defendant also attempted to convince the victim to say that she had previously lied and that defendant did not commit the subject acts. Defendant does not argue that this evidence was improperly admitted.