

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MONTE WOODROW DILL,

Defendant-Appellant.

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UNPUBLISHED

February 10, 1998

No. 193685

Kent Circuit Court

LC No. 94-003016 FC

Before: Gage, P.J., and Murphy and Reilly, JJ.

MEMORANDUM.

Defendant was convicted by jury of kidnapping a child under the age of fourteen years, MCL 750.350; MSA 28.582, and received an enhanced term of imprisonment of twenty-one to fifty years, MCL 769.12; MSA 28.1084. Defendant appeals as of right. We affirm. The instant case is being decided without oral argument pursuant to MCR 7.214(E).

The prosecutor established by a preponderance of the evidence that defendant validly waived his right to silence. *People v Cheatham*, 453 Mich 1, 27 (Boyle, J.), 44 (Weaver, J.); 551 NW2d 355 (1996). The record establishes that a slight odor of alcohol emanated from defendant at the time of his interrogation by the police detective and that the detective believed that defendant had been imbibing alcohol before his arrest. There was no evidence, however, that defendant was intoxicated, let alone so intoxicated as to be unable to voluntarily waive his right to silence. *People v Cipriano*, 431 Mich 315, 334; 429 NW2d 781 (1988); *People v Leighty*, 161 Mich App 565, 571; 411 NW2d 778 (1987). Moreover, the totality of the circumstances indicate that defendant understood he had a right not to speak, that he had a right to counsel and that anything he told the detective could be used against him in a subsequent trial. *Cheatham, supra*, 28-30 (Boyle, J.), 44 (Weaver, J.).

The trial court properly admitted prior bad act evidence concerning a suggestive statement about sexual maturity made by defendant in reference to a ten-year old girl who was not the victim in this case. The evidence was admissible for the proper purposes of showing a common plan or scheme to secret an adolescent female for improper sexual contact and to show preparation to engage in such

contact. MRE 404(b); *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), modified 445 Mich 1205 (1994).

Moreover, the evidence was relevant because the evidence demonstrates that defendant was engaging in a classic stalking of the young females in his neighborhood, looking for an appropriate victim. As such, the bad acts evidence tended to make it more probable than it would be without the evidence that defendant kidnapped the instant victim because the uncharged act shows that defendant was actively implementing the first stage of his plan to secure an adolescent female for improper sexual contact, that stage being the selection of an appropriate victim. *People v Engleman*, 434 Mich 204, 220-221; 453 NW2d 656 (1990).

Finally, the probative value did not substantially outweigh its potential for unfair prejudice where the prior bad act evidence was offered to prove a crucial fact, that being that defendant committed the instant kidnapping, by showing that defendant had developed a plan or scheme to do such an act and that he had implemented the first stage of the plan, where the evidence directly tends to prove the fact in support of which it was offered and where any potential for issue confusion or jury confusion was minimal in light of the limiting instruction given by the trial court. *People v Oliphant*, 399 Mich 472, 490; 250 NW2d 443 (1976).

Affirmed.

/s/ Hilda R. Gage

/s/ William B. Murphy

/s/ Maureen Pulte Reilly