STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellant,	UNPUBLISHED September 24, 1999
v	No. 213882 Ottawa Circuit Court
ROSEMARY WEST-BARTMAN, Defendant-Appellee.	LC No. 98-021716 FH

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v	No. 214898 Ottawa Circuit Court
ROSEMARY WEST-BARTMAN, Defendant-Appellant.	LC No. 98-021716 FH

Before: McDonald, P.J., and Neff and Smolenski, JJ.

PER CURIAM.

Defendant Rosemary West-Bartman was convicted of child abuse in the second degree, MCL 750.136b(3); MSA 28.331(2)(3). The court sentenced defendant to twenty-four months' probation. Defendant appeals her conviction as of right; plaintiff appeals as of right from the sentence imposed. We affirm.

These appeals arise from an incident in which defendant's four-year-old grandson nearly drowned in a bathtub. The victim wet himself while reading a book with defendant. Defendant became upset, and put him in the bathtub, making him lie on his stomach while she filled the bathtub with cold water. According to the victim, his sister, and his brother, defendant regularly used the bathtub as a

form of discipline; she also put the victim's head in the toilet when he misbehaved. At times, defendant would tie their hands and legs together when disciplining them.

I

In Docket No. 214898, defendant contends that the trial court abused its discretion in admitting evidence of prior bad acts. Specifically, defendant contends that the court should not have admitted evidence that (1) the victim, his sister, and his brother had been punished previously by placing them in a bathtub of cold water, (2) the victim had been punished by putting his head in the toilet, (3) the children's wrists and legs were tied together during punishment, and (4) the victim's brother had been made to stand on his head when he misbehaved. We disagree.

The admission of other acts evidence is limited by MRE 404(b), which prohibits evidence of other crimes, wrongs or acts "to prove the character of a person in order to show action in conformity therewith." To be admissible, such evidence must be offered for a proper purpose, i.e., relevant to an issue other than propensity, and relevant under MRE 402, as enforced through MRE 104(b). *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), amended 445 Mich 1205 (1995). In addition, the probative value of the evidence must not be substantially outweighed by the danger of unfair prejudice under MRE 403. *Id.* at 74-75.

In determining whether other acts evidence is offered for a proper purpose, "[t]he logical relationship between the proffered evidence and the ultimate fact sought to be proven must be closely scrutinized." *People v Crawford*, 458 Mich 376, 388; 582 NW2d 785 (1998). "If the prosecutor fails to weave a logical thread linking the prior act to the ultimate inference, the evidence must be excluded." *Id*. at 390. The admissibility of evidence of other acts is within the trial court's discretion. *People v Catanzarite*, 211 Mich App 573, 579; 536 NW2d 570 (1995).

The defense theory of the case was that the incident with the victim was an accident. The prosecutor argued that without evidence of other acts, only the testimony of the four-year-old victim would be admitted, limited to the incident itself, adding weight to defendant's claim of accident. Defendant could argue that the victim did not remember the incident correctly because of his age and the trauma from the incident.

Evidence of bad acts may be admissible to show that the act in question was not performed inadvertently or involuntarily. McCormick, Evidence (3d ed), § 190, p 561. In this case, the other acts committed upon the victim, his sister, and his brother were admissible to show that the incident was not isolated, but part of defendant's pattern of disciplining the children. Evidence of other acts may be admitted to show absence of mistake or accident. MRE 404(b); *People v Williamson*, 205 Mich App 592, 595-596; 517 NW2d 846 (1994). This evidence was legally and logically relevant.

II

Defendant argues that, even if the evidence was offered for a proper purpose, it should nonetheless have been excluded because it was substantially more prejudicial than probative. MRE 403 requires that otherwise relevant evidence be excluded when the probative value of the evidence is substantially outweighed by the danger of unfair prejudice. *Crawford, supra* at 397-398. Defendant points out that jurors were crying during the victim's sister's testimony.

We have no doubt that the testimony was powerful and affected the jury. However, a trial court must determine whether the danger of unfair prejudice substantially outweighs the probative value of the evidence in view of the availability of other means of proof and other facts appropriate for making a decision under MRE 403. *VanderVliet, supra* at 75. Ordinarily, there can be no abuse of discretion on a close evidentiary issue. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995).

The court gave an extensive limiting instruction directing the jury to consider the evidence only on the issue of lack of mistake or accident, or to show a plan, system, or characteristic scheme of discipline. It forbade the jury from considering the evidence to show character conformity. The limiting instruction sufficiently cushioned the effect of this evidence. *Id*. at 385.

III

In Docket No. 213882, plaintiff argues that the trial court imposed a disproportionately lenient sentence of twenty-four months' probation. We disagree. In determining whether the sentence is disproportionate to the offense committed, this Court must determine whether the trial court abused its discretion. *People v Milbourn*, 435 Mich 630, 653; 461 NW2d 1 (1991); *People v Paquette*, 214 Mich App 336, 344-345; 543 NW2d 342 (1995).

Plaintiff first argues that the court abused its discretion because it concentrated on the threat to society and the victim when imposing sentence. Factors considered in imposing sentence should be balanced with the objectives of punishment: (1) reformation of the offender; (2) protection of society; (3) punishment of the offender; and (4) deterrence of others from committing like offenses. *People v Snow*, 386 Mich 586, 592; 194 NW2d 314 (1972); *People v Rice (On Remand)*, 235 Mich App 429, 446; 597 NW2d 843 (1999). The trial court need not expressly mention each goal of sentencing when imposing sentence. *Id*.; *People v Johnson*, 173 Mich App 706, 709; 434 NW2d 218 (1988).

We have examined the record from the sentencing hearing. The court considered comments in letters written on defendant's behalf; which bear on reformation of the offender. The court expressly noted that it did not view defendant as a threat to society. Further, as long as defendant was not in a position to discipline her grandchildren, she was not a threat to them. The court considered the proper factors in assessing sentence.

Plaintiff also contends that the sentence was disproportionately lenient in light of the offense and the offender. Defendant was convicted of a single act of recklessness. Plaintiff presents a litany of disciplinary measures defendant used with her grandchildren. Nothing requires that a court assess higher sentences in light of uncharged acts. A trial court properly exercises its discretion "by determining where, on the continuum from the least to the most serious situations, an individual case falls and by sentencing the offender in accordance with this determination." *Milbourn, supra* at 653-654.

The court concluded that defendant's conduct, while highly improper, did not warrant a term of confinement. Given that defendant had no previous criminal record or reports of abuse, and that she was convicted of reckless conduct, we conclude that the trial court did not abuse its discretion in imposing probation rather than a term of confinement.

Affirmed.

/s/ Gary R. McDonald
/s/ Janet T. Neff
/s/ Michael R. Smolenski