

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ALBERT FLOREZ,

Defendant-Appellant.

UNPUBLISHED

April 28, 2000

No. 214500

Kent Circuit Court

LC No. 97-009083-FC

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

MEMORANDUM.

Defendant appeals as of right his conviction after a jury trial for first-degree criminal sexual conduct, MCL 750.520(b)(1)(f); MSA 28.788(2)(1)(f). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the trial court erred in admitting pursuant to MRE 404(b) similar acts testimony regarding a prior assault committed on another woman. MRE 404(b)(1) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

This is a rule of inclusion, and its application is not limited to the listed factors. *People v VanderVliet*, 444 Mich 52, 64; 508 NW2d 114 (1993). In order to be admitted under the rule, the evidence must be admitted for a proper purpose, it must be relevant, the court must determine that the probative value of the evidence is not substantially outweighed by the potential for unfair prejudice, and the court may, upon request, provide a limiting instruction to the jury. *Id.* at 55. The decision whether

such evidence is admissible is within the trial court's discretion, and will only be reversed where there has been a clear abuse of that discretion. *People v Crawford*, 458 Mich 376, 383; 583 NW2d 785 (1998).

Contrary to defendant's argument, the prosecutor identified proper purposes for the admission of the evidence at the outset of the trial. The prosecutor argued that the evidence established modus operandi and motive in this case. The prosecutor also stated that the evidence would show absence of mistake or accident. The court ruled that the evidence would be admissible under these circumstances. Before trial, the court directed the prosecutor not to address the fact that defendant was convicted of a criminal sexual conduct charge as a result of the prior incident. The decision of the court did not deprive defendant of a fair trial, and did not constitute an abuse of discretion.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski