STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 20, 2001
v	No. 185484 Kent Circuit Court
DARRELL SIMPSON, Defendant-Appellant.	LC No. 94-0205-FC ON SECOND REMAND

Before: Saad, P.J., and Neff and Sawyer, JJ.

MEMORANDUM.

Our Supreme Court remanded this case for a second time for reconsideration in light of *People v Sabin*, 463 Mich 43; 614 NW2d 888 (2000). We now affirm.

On original submission, we affirmed defendant's second-degree criminal sexual conduct (CSC II)[1] conviction, but reversed his first-degree criminal sexual conduct (CSC I)[2] conviction and remanded for a new trial, concluding that the trial court abused its discretion by admitting other acts evidence of sexual contact by defendant. *People v Simpson*, unpublished opinion per curiam of the Court of Appeals, issued November 18, 1997 (Docket No. 185484) (*Simpson I*). Our Supreme Court reversed and remanded for reconsideration in light of *People v Starr*, 457 Mich 490; 577 NW2d 673 (1998) and *People v Crawford*, 458 Mich 376; 582 NW2d 785 (1998), in which the Court clarified and explained its holding in *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). After considering those decisions, we reversed defendant's CSC II conviction and remanded for a new trial. *People v Simpson*, unpublished opinion per curiam of the Court of Appeals, issued August 6, 1999 (Docket No. 185484) (*Simpson II*). In lieu of granting leave to appeal, the Supreme Court again remanded this case for reconsideration following its decision in *Sabin, supra*. 463 Mich 925 (2000).

The facts and issues relevant to this appeal are set out in our previous opinion, *Simpson II, supra*. After reconsidering this case in light of *Sabin, supra*, we hold that the trial court did not abuse it discretion in admitting the other acts evidence as to both the CSC I and CSC II offenses. In so holding, we adopt the analysis set forth in the dissent filed by Judge Markman[3] in *Simpson II*, an analysis which we believe is in accord with the Supreme Court's reasoning in *Sabin, supra*.

As Judge Markman concluded, the evidence was offered for a proper purpose, it was relevant to an issue of fact of consequence at trial, it's probative value was not substantially outweighed by the danger of unfair prejudice and the trial court gave an appropriate limiting instruction. *VanderVliet, supra*, 444 Mich 74-75. We agree that the evidence was, therefore, admissible to show modus operandi or a common plan, scheme or system of committing the acts and did not constitute impermissible character to conduct or propensity evidence. While this is a close

[1] MCL 750.520c(1)(b); MSA 28.788(3)(1)(b).

[2] MCL 750.520b(1)(b); MSA 28.788(2)(1)(b).

[3] Now Justice Markman.

evidentiary question in this case, reasonable minds could differ regarding whether the other acts evidence shared enough common features to support an inference that the uncharged and charged acts showed a common scheme, plan or system. Accordingly, under the circumstances of this case, we cannot conclude that the trial court abused its discretion in admitting the evidence under MRE 404(b). *Sabin*, *supra*, 463 Mich 67.

Affirmed.

/s/ Henry William Saad
/s/ Janet T. Neff
/s/ David H. Sawyer