

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HENRY LEE YOUNG,

Defendant-Appellant.

UNPUBLISHED

May 18, 2001

No. 217455

Oakland Circuit Court

LC No. 98-158785-FC

Before: McDonald, P.J., and Smolenski and K. F. Kelly, JJ.

MEMORANDUM.

Defendant appeals as of right from a jury conviction of first-degree criminal sexual conduct, MCL 750.520b; MSA 28.788(2), for which he was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to twenty to forty years in prison. We affirm.

Defendant's sole claim on appeal was that the trial court erroneously admitted other acts evidence under MRE 404(b)(1). We review the trial court's decision for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). However, any error in the admission of the evidence "is not a ground for reversal unless 'after an examination of the entire cause, it shall affirmatively appear' that it is more probable than not that the error was outcome determinative." *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Under MRE 404(b)(1), evidence of other crimes, wrongs or acts is not admissible to prove the character of a person to show action in conformity therewith. Thus, if the sole purpose in offering the evidence is to show the defendant's propensity for particular conduct based on his character as inferred from other wrongful conduct, it is not admissible. It is admissible, however, for another purpose if that purpose is material. The admissibility of other acts evidence is to be evaluated using the safeguards already present in the Rules of Evidence. *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). The court must first determine whether the evidence is relevant to an issue other than the defendant's propensity to commit the crime charged under MRE 404(b). Second, the logical relevance of the evidence must be evaluated using the relevance definition provided under MRE 401 and MRE 402 as enforced through MRE 104(b). Third, the court must evaluate the evidence under MRE 403 to make certain that the danger of undue prejudice does not substantially outweigh the probative value of the evidence. Finally, should a party request a limiting instruction, the court may provide one under MRE 105. *Id.* at 74-75.

The trial court did not abuse its discretion in admitting the evidence. First, it was relevant to prove lack of consent. Given the prior history of violence by defendant against the victim, as alluded to by defendant in his statement to the police, evidence of such acts was relevant to show that the victim would have had reason to fear defendant's reaction if she resisted him and thus did not consent to sex but was forced. *People v Carner*, 117 Mich App 560, 565-566; 324 NW2d 78 (1982). The evidence was also admissible to explain the victim's delay in reporting the incident. *People v Dunham*, 220 Mich App 268, 273; 559 NW2d 360 (1996). Given that plus the fact that the jury was given a limiting instruction regarding the purpose for which the evidence could properly be considered, we find no error.

Affirmed.

/s/ Gary R. McDonald

/s/ Michael R. Smolenski

/s/ Kirsten Frank Kelly