

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARNOLD DARNELL PARKER,

Defendant-Appellant.

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UNPUBLISHED

May 25, 2001

No. 223255

Muskegon Circuit Court

LC No. 98-042502-FH

Before: Jansen, P.J., and Zahra and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of criminal sexual conduct in the second degree (CSC II), MCL 750.520c; MSA 28.788(3), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Complainant, defendant's fifteen-year-old sister-in-law, testified that from time to time she stayed overnight at the home of her sister and defendant to act as a baby-sitter for their children. Complainant testified that on one occasion defendant touched her vaginal area while she was sleeping in a bed she shared with her two nieces. Over defendant's objection the trial court admitted testimony from three sisters of defendant's wife and complainant, each of whom testified that defendant touched her in the vaginal area while she was an overnight guest in defendant's home. Defendant denied touching complainant, and opined that complainant might have fabricated the allegation because she was angry with him for disciplining her. The trial court found complainant's testimony and that given by her sisters credible, rejected defendant's testimony, and found defendant guilty.

Evidence of other crimes, wrongs, or acts is inadmissible to prove the character of a person in order to show conformity therewith. Such evidence may be admissible to show motive, opportunity, intent, preparation, scheme, plan, or system in doing an act. MRE 404(b)(1). To be admissible under MRE 404(b)(1), other acts evidence must satisfy three requirements: (1) it must be offered for a proper purpose; (2) it must be relevant; and (3) its probative value must not be substantially outweighed by its potential for unfair prejudice. A proper purpose is one other than establishing the defendant's character to show a propensity to commit the offense. *People v Starr*, 457 Mich 490, 496; 577 NW2d 673 (1998); *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), modified 445 Mich 1205; 520 NW2d 338 (1994). We review a trial court's

decision to admit other acts evidence for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998).

Defendant argues that the trial court abused its discretion by admitting other acts evidence via the testimony of complainant's sisters, and that he was denied a fair trial as a result. We disagree and affirm defendant's conviction. The evidence was offered for proper purposes, i.e., to establish intent, to demonstrate scheme or plan, and to demonstrate lack of mistake. MRE 404(b)(1). Moreover, the evidence was relevant. Evidence is relevant if it is material and has probative value. Evidence is material if it tends to make the existence of any fact that is of consequence to the action more probable or less probable than it would be without the evidence. *Crawford, supra* at 388-390. Defendant's general denial of guilt put at issue all of the elements of the charged offense. *Starr, supra* at 501. Defendant denied touching complainant, and maintained that complainant had reason to fabricate the allegation. An intentional touching of the victim's intimate parts in order to achieve sexual arousal or gratification is an element of CSC II. MCL 750.520a(1); MSA 28.788(1)(1); *People v Piper*, 223 Mich App 642, 645; 567 NW2d 483 (1997). The testimony from complainant's sisters that defendant engaged in conduct with them similar to that alleged by complainant was relevant to lack of mistake on complainant's part, and to scheme or plan on defendant's part. In addition, the evidence was relevant to defendant's intent when he entered the room where complainant was sleeping. Furthermore, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. MRE 403. The trial court sat as the trier of fact. A judge, sitting as the trier of fact, is presumed to have an understanding of the law which allows him to decide the case only on properly admitted evidence. *People v Jones*, 168 Mich App 191, 194; 423 NW2d 614 (1988). Admission of the other acts evidence did not constitute an abuse of discretion.

Affirmed.

/s/ Kathleen Jansen  
/s/ Brian K. Zahra  
/s/ Donald S. Owens