

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES GILBERT LEWIS,

Defendant-Appellant.

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UNPUBLISHED  
November 6, 2001

No. 224326  
Grand Traverse Circuit Court  
LC No. 99-007935-FH

Before: Doctoroff, P.J., and Wilder and Schmucker\*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree criminal sexual conduct, MCL 750.520c. The trial court sentenced him to two years' probation, with the first six months to be served in jail. Defendant appeals as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

This case arises from an incident involving defendant's nine-year-old step-grandson. Defendant denied any sexual contact with the youth and he maintained that he would never harm any of his grandchildren. On direct examination, defense counsel asked defendant:

*Q.* Mr. Lewis, in your sixty-nine years –

*A.* Yes.

*Q.* – do you know of any claims that have ever been made against you by anyone – I'm sorry – do you know of any claims that have ever been made by anybody against you involving criminal sexual conduct and taking advantage of minors or children or women or anything?

*A.* Never.

The prosecutor subsequently revealed that the state police had investigated another grandchild's complaint of sexual misconduct by defendant and he indicated that he planned to impeach defendant by asking him whether he knew of the investigation. The trial court allowed the impeachment evidence, ruling that it was admissible under MRE 404(a)(1) and MRE 405(a).

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\* Circuit judge, sitting on the Court of Appeals by assignment.

On cross-examination, the prosecutor asked defendant if he was aware that his stepdaughter informed the state police that her daughter, defendant's granddaughter, claimed defendant touched her. Defendant responded in the negative.

On appeal, defendant contends that the trial court committed error requiring reversal in permitting the prosecution to question him about his awareness of another grandchild's complaint of sexual touching. The decision whether to allow evidence is within the trial court's discretion and will be reversed where there is an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). By definition, a trial court's decision on close evidentiary questions cannot be an abuse of discretion. *People v Layher*, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 116315, decided 07/17/01), slip op, 6. We find no abuse of discretion in this case.

MRE 404(a)(1) allows a criminal defendant to introduce evidence of his character to prove that he could not have committed the crime charged. *People v Whitfield*, 425 Mich 116, 130; 388 NW2d 206 (1986). Where such evidence is admitted, MRE 405(a) allows cross-examination into relevant specific instances of conduct. *People v Lukity*, 460 Mich 484, 498; 596 NW2d 607 (1999). In *Lukity*, the defendant father was charged with criminal sexual conduct involving his daughter. Our Supreme Court concluded that his testimony on direct examination, that he only engaged in appropriate activities with his children, "opened the door" for cross-examination regarding his activities with the children. *Id.* at 498. The Court further concluded that the prosecutor's question whether the defendant shared marijuana with his son was proper impeachment under MRE 404(a)(1) and MRE 405. *Id.* at 498-499.

In *People v Leonard*, 224 Mich App 569; 569 NW2d 663 (1997), the defendant, who was charged with breaking and entering, was impeached with evidence of a prior breaking and entering charge that did not result in a conviction. *Id.* at 571, 593-594. This Court concluded that the impeachment evidence was proper because the defendant had placed his character at issue when he claimed on direct examination that he had never been charged with a felony. *Id.* at 594. Citing *People v Vasher*, 449 Mich 494, 503; 537 NW2d 168 (1995), this Court noted that once a defendant "has placed his character in issue, it is proper for the prosecution to introduce evidence that the defendant's character is not as impeccable as is claimed." *Id.*

Under *Lukity* and *Leonard*, the trial court did not abuse its discretion in allowing the prosecutor to impeach defendant's testimony. Although defendant emphasizes that the question posed to him on direct examination was whether, to his knowledge, he had ever been accused of misconduct, the clear import of his testimony was that no one had ever made a claim like this against him. Under MRE 404(a)(1) and MRE 405(a), the prosecution was allowed to test the accuracy of this testimony.

Finally, we reject defendant's suggestion that the cross-examination was so prejudicial that reversal is required. The trial court gave the jury a cautionary instruction regarding the evidence, defense counsel's questioning of defendant lessened the impact of the subsequent

cross-examination, and counsel's closing argument further mitigated any prejudice. Under these circumstances, reversal is not required.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder

/s/ Chad C. Schmucker