

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES GARY YORK, SR.,

Defendant-Appellant.

UNPUBLISHED

April 16, 2002

No. 229995

St. Clair Circuit Court

LC No. 99-002497-FC

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

PER CURIAM.

Defendant appeals as of right his jury conviction of one count of first-degree criminal sexual conduct, MCL 750.520b(1)(a), and four counts of second-degree criminal sexual conduct, MCL 750.520c(1)(a). We affirm.

I

Defendant was convicted of various acts of criminal sexual conduct involving two granddaughters and a step-granddaughter during visits to his home sometime between 1994 and 1998. At the time of the alleged acts, the girls ranged in age from approximately seven to eleven years old. All three victims testified at trial, relating incidents such as defendant touching the victim's genital area, touching his private parts against the victim's buttocks, and reaching inside the victim's underwear, touching her breasts and inserting his finger into her vagina.

Defendant was previously convicted of criminal sexual conduct involving his daughter in 1982, following allegations that he sexually assaulted both his daughter and her childhood friend when they were approximately eight or nine years old. The trial court granted the prosecutor's motion to introduce evidence of defendant's prior conviction and the surrounding circumstances, pursuant to MRE 404(b), for the purpose of showing motive, scheme or intent.

II

Defendant claims that the admission of his prior conviction was improper under MRE 404(b) and denied him his right to a fair trial. He argues that his sexual abuse of his eight-year-old daughter and her friend in 1982 was inadmissible to show intent or plan to commit the charged acts in this case essentially because the other acts were of debatable similarity, remote in time, and were unfairly prejudicial.

This Court reviews a trial court's decision to admit evidence for abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). An abuse of discretion is found if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling. *People v Rice (On Remand)*, 235 Mich App 429, 439; 597 NW2d 843 (1999). We find no abuse of discretion.

III

This Court applies a three-part test in considering the admissibility of other acts evidence:

First, that the evidence be offered for a proper purpose under Rule 404(b); second, that it be relevant under Rule 402 as enforced through Rule 104(b); third, that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. [*People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994).]

A "proper purpose" under MRE 404(b) is one other than a character to conduct theory, i.e., other than showing "defendant's inclination to wrongdoing in general to prove that the defendant committed the conduct in question." *Id.* at 63, 74. Generally, "relevant evidence" is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401; *VanderVliet, supra* at 60. Other similar misconduct is logically relevant where the other acts and the charged offense are "sufficiently similar to support an inference that they are manifestations of a common plan, scheme, or system." *People v Sabin (After Remand)*, 463 Mich 43, 63; 614 NW2d 888 (2000).

Here, the challenged other acts evidence involved several acts of sexual abuse of defendant's eight-year-old daughter and her friend in 1982. Defendant's argument that these acts were too remote in time and too dissimilar to the charged acts to be relevant to show a common scheme or plan is unsupported by Michigan caselaw. See *id.* at 66-67 (repeated acts of oral sex performed on stepdaughter relevant to show common scheme or plan for single instance of sexual intercourse with daughter); *People v Knapp*, 244 Mich App 361, 366, 379-380; 624 NW2d 227 (2001) (evidence of criminal sexual conduct in 1976 was relevant to prove a common scheme or plan for a similar incident in 1997). As in *Sabin, id.* at 66, the other acts and the charged offenses shared sufficient common features to infer a plan or scheme. The victims were of a similar age at the time of the abuse and the incidents of touching were similar in nature. Defendant perpetrated the abuse in his home, taking advantage of his family relationship, while or after the victims stayed overnight.

Defendant's attempts to distinguish this case from *Sabin* are unconvincing. The fact that there were three testifying victims in the instant case rather than one in *Sabin* does not render the other acts evidence inadmissible. See *People v Pesquera*, 244 Mich App 305, 308, 316-318; 625 NW2d 407 (2001) (other acts of sexual abuse properly admitted although five child victims testified against the defendant). Furthermore, although there was some medical evidence regarding one of the victims in this case, that evidence was not conclusive, nor did it render the other acts evidence less probative. The other acts evidence was relevant to show a common scheme, plan, or system. *Id.* at 318-319.

Defendant further argues that the probative value of the challenged evidence was substantially outweighed by the danger of unfair prejudice and should have been excluded because the other acts evidence was merely cumulative where the three victims had testified about the similarities in defendant's conduct toward them. MRE 403; *VanderVliet, supra* at 75. However, as noted, the use of other acts evidence has been sustained against unfair prejudice challenges even in cases where multiple victims testified to common features of the defendant's behavior. See *Pesquera, supra*. We find no abuse of discretion in the determination that the danger of undue prejudice did not substantially outweigh the probative value of the evidence, particularly given the court's limiting instructions to minimize the danger of unfair prejudice. *Id* at 320.

Affirmed.

/s/ Brian K. Zahra
/s/ Janet T. Neff
/s/ Henry William Saad