

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LESLIE LEE WILLIAMS, a/k/a DAVID KEVIN
WHEELER,

Defendant-Appellant.

UNPUBLISHED

April 19, 2002

No. 228022

Kent Circuit Court

LC No. 99-009641-FH

Before: K.F. Kelly, P.J., and Doctoroff and Cavanagh, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of soliciting prostitution, MCL 750.451, entered after a jury trial. We affirm.

Defendant was arrested in a prostitution sweep. At trial, the police officer witnesses occasionally referred to defendant by his full name or as “the defendant.” Defendant did not object to these references. On two occasions a witness referred to defendant as “a known prostitute.” Defendant objected, and the trial court struck the references. Subsequently, the trial court instructed the jury that it was not to consider any testimony that was stricken. The jury found defendant guilty as charged.

Evidence of other crimes, wrongs, or acts is inadmissible to prove the character of a person in order to show that he acted in conformity with it, but may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident. MRE 404(b)(1). To be admissible, bad acts evidence must be offered for a proper purpose, must be relevant, and 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 his propensity to commit the offense. *People v Starr*, 457 Mich 490, 496; 577 NW2d 673 (1998). The admissibility of bad acts evidence is within the discretion of the trial court. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998).

We affirm defendant’s conviction. The references to defendant as “a known prostitute” informed the jury that defendant was known to the police and at a minimum had been suspected of engaging in similar activity on other occasions. However, defendant objected to both references, and the trial court struck the testimony. The trial court instructed the jury that it was

to disregard any testimony that was stricken, and was to decide the case only on properly admitted evidence. A jury is presumed to follow the instructions given to it. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). Defendant cites no evidence to rebut this presumption. No evidence indicates that the prosecution provided the required notice that it intended to introduce such evidence. MRE 404(b)(2). However, given defendant's prompt objection to the evidence, the trial court's decision to strike the testimony, and the trial court's instruction to the jury, the lack of notice does not warrant reversal of defendant's conviction. See *People v Hawkins*, 245 Mich App 439, 456; 628 NW2d 105 (2001).

Even if we were to conclude that error occurred, we would find that reversal was not required. Given the strength of the properly admitted evidence, and the trial court's instruction to the jury to disregard stricken testimony, any error that occurred was not outcome determinative. *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999).

Finally, defendant argues that references to him by his full name or as "the defendant" constituted error. We disagree. Defendant did not object to this testimony; therefore, he bears the burden of showing prejudice either because of the conviction of an innocent person, or because the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). The references to defendant by his name or as "the defendant" did not specify that the officers had had prior similar contact with him. Defendant's apparent assertion that the jury might have placed more weight on these references than on the testimony concerning the charged incident is based entirely on speculation. Defendant has failed to show the required prejudice. *Id.*

Affirmed.

/s/ Kirsten Frank Kelly
/s/ Martin M. Doctoroff
/s/ Mark J. Cavanagh