

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID MICHAEL PERKINS,

Defendant-Appellant.

UNPUBLISHED
February 17, 2004

No. 243966
Oakland Circuit Court
LC No. 02-183668-FH

Before: Schuette, P.J., and Meter and Owens, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction on three counts of second-degree criminal sexual conduct, MCL 750.520c. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the trial court erred in admitting other bad acts evidence under MRE 404(b). MRE 404(b) provides that other acts evidence is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence 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 when they are material. MRE 404(b) is a rule of inclusion, not exclusion. *People v Engelman*, 434 Mich 204, 213; 453 NW2d 656 (1990).

In order to present other acts evidence, the prosecutor must meet the three-part test set forth in *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993). The evidence must be offered for a proper purpose under MRE 404(b), it must be relevant under MRE 402, and the probative value must not be substantially outweighed by unfair prejudice. The court may, upon request, provide a limiting instruction to the jury. The trial court's decision to admit other acts evidence is reviewed for abuse of discretion. *People v Sabin (After Remand)*, 463 Mich 43, 55; 614 NW2d 888 (2000).

Here, the other acts evidence met the first requirement as it was offered for proper purposes: to show a plan, system, or scheme and to show the absence of mistake and that the charged sexual touching was not accidental. The evidence was also relevant where one of the complainants testified that the touching may possibly have been accidental.

Defendant argues that he was subjected to unfair prejudice because the other acts evidence involved additional behaviors that were not present in the instant case. However, these behaviors were related to defendant's common scheme of obtaining sexual pleasure from young girls under his authority. The trial court gave the limiting instruction requested by defendant, and there is no showing that defendant was unfairly prejudiced by the admission of the other acts evidence.

Affirmed.

/s/ Bill Schuette

/s/ Patrick M. Meter

/s/ Donald S. Owens