

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JIMMIE ALLEN RANDOLPH,

Defendant-Appellant.

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UNPUBLISHED  
November 9, 2004

No. 248957  
Oakland Circuit Court  
LC No. 2002-184556-FH

Before: Cavanagh, P.J., and Smolenski and Owens, JJ.

CAVANAGH, P.J. (*dissenting*).

I respectfully dissent. I disagree that the other-acts evidence was properly admitted to establish a common plan, scheme, or system.

The prosecutor offered the disputed evidence for the proper purpose of proving that the charged acts occurred. See *People v Sabin (After Remand)*, 463 Mich 43, 62; 614 NW2d 888 (2000). However, purported evidence in support of a “common plan, scheme, or system” theory to show that the charged act occurred must be logically relevant, i.e., the uncharged misconduct and the charged offense must be sufficiently similar to support an inference that they are part of a common plan, scheme, or system. *Id.* at 62, 65-66. There must be “such a concurrence of common features that the various acts are naturally to be explained as caused by a general plan of which they are the individual manifestations.” *Id.* at 64-65, quoting 2 Wigmore, Evidence § 304, p 249 (emphasis removed).

Here, the proffered evidence was not logically relevant to the issue whether the charged act occurred. The incident with A.B. and the incident with F.W. were not “sufficiently similar to support an inference that they are manifestations of a common plan, scheme, or system” to initiate sexual relationships with young girls. See *id.* at 63. That both were fourteen-year-old students at the time the vastly different incidents occurred is not sufficient, i.e., a kiss by physical force and an ongoing sexual relationship in exchange for money and gifts are not sufficiently similar scenarios to support such an inference. But, even assuming that A.B.’s testimony was probative, its marginal probative value was outweighed by the danger of unfair prejudice. See *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998).

And, after examination of the entire cause, it affirmatively appears more probable than not that, in light of the strength and weight of the untainted evidence, the error was outcome determinative. See *People v Mitchell (On Remand)*, 231 Mich App 335, 339; 586 NW2d 119

(1998). This case was, at its essence, a close credibility contest between defendant and F.W. See *People v Lukity*, 460 Mich 484, 496; 596 NW2d 607 (1999). Motel receipts were the primary physical corroborating evidence in this case which defendant explained were the result of an extended but failed sexual tryst defendant was having with F.W.'s cousin. Since the inadmissible testimony tended to corroborate F.W.'s testimony and, thus bolster her credibility, I would conclude that it impermissibly and unfairly "tipped the scale" in favor of the prosecution and would reverse and remand for a new trial. See *People v Gee*, 406 Mich 279, 283; 278 NW2d 304 (1979).

/s/ Mark J. Cavanagh