

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY RICHARD STONER,

Defendant-Appellant.

UNPUBLISHED

January 29, 2008

No. 271411

Washtenaw Circuit Court

LC Nos. 04-000988-FC

04-000989-FC

Before: Schuette, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Defendant was convicted by a jury of two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a), and two counts of second-degree criminal sexual conduct, MCL 750.520c(1)(a). He was sentenced to concurrent prison terms of 15 to 35 years' for each of the first-degree CSC convictions and 100 months to 15 years for each of the second-degree CSC convictions. He appeals as of right. For the reasons set forth in this opinion, we affirm.

The victim, age 14, and her mother testified that defendant, a family friend, stayed at their home on occasion. The victim testified that one day in December 2003 or January 2004, her mother brought her home early from school because she was ill. The victim's mother then left the house and the victim went up to her room. She found defendant lying on the bottom bunk of her bunk bed. She stated that defendant sometimes slept there while she was in school. Defendant called the victim over. When she approached, he reached up under her shirt and touched her breasts. Then he unfastened her pants, touched her genital area, and inserted his finger in her vagina. Afterward, defendant told her "not to say anything." The victim testified that a similar incident occurred on another occasion in early 2004. After that, she asked her brother to sleep in her bedroom "so he wouldn't touch me anymore." The victim explained that she said nothing to her mother, even when first asked, "[b]ecause I was scared because he told me that if I told anybody that there was something that was going to happen to my mom and me. So I didn't want anything to happen to my mom."

Defendant was engaged to witness LW's aunt. LW testified that once in 2002, when she was 14, she was at her aunt's house when defendant suggested that he take measurements for clothing. He had LW step into the bathroom and remove her shirt and bra "to get proper measurements." In the course of measuring LW's bust, defendant touched her breasts. LW testified that the following year, she was on a trip with defendant and defendant asked her to lie down on the seat. When she did, he reached into her pants and rubbed her genital area.

According to LW, defendant “kept telling me how he loved me and he knew it was wrong and he knows he shouldn’t” On the return trip, LW fell asleep and awoke to find her seat belt off, her head on defendant’s lap, and defendant was “fingering” her. She felt defendant’s finger inside her. LW testified to another incident that occurred in 2004. She stated that defendant entered her bedroom smoking a cigarette. He intentionally flicked the ashes onto the crotch of her pants, and then reached between her legs to wipe them off.

Witness CA and her mother testified that LW’s aunt was CA’s daycare provider. CA testified that once in 2002, when she was nine, she was taking a nap when defendant came into the room, lied down on the bed beside her, and reached under her nightgown and touched her genital area. When CA moved away, defendant got up and went into the bathroom. When he came out, he returned to the bedroom, locked the door, and returned to the bed and licked CA’s genital area.

Nicole Womack, a child therapist, was contacted by the victim’s mother in March 2004, after the victim came forward. Womack testified that she spoke to the victim, who stated that on the day she came home early from school, defendant touched her buttocks; she said nothing about being digitally penetrated or about a second incident.

Daryl Martin, defendant’s brother, testified that when defendant stayed at the victim’s home, he preferred to sleep in a camper he brought with him because the house was noisy and unkempt.

LW’s aunt testified that she was the person who measured LW’s bust in preparation for buying some new bras. LW was wearing a bra at the time and defendant was not in the room.

Defendant’s sole claim on appeal is that the trial court erred in admitting LW’s and CA’s testimony under MRE 404(b). The trial court’s ruling regarding the admission of evidence is reviewed for an abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002).

We note that the trial court admitted the evidence on two bases, finding that it was admissible as other acts evidence under MRE 404(b)(1), and that it was also admissible under MCL 768.27a. Defendant has not challenged the court’s ruling with respect to MCL 768.27a. Because defendant has failed to address an issue that must necessarily be reached to reverse the trial court, defendant is not entitled to relief. *Sargent v Browning-Ferris Industries*, 167 Mich App 29, 37; 421 NW2d 563 (1998); *Roberts & Son Contracting, Inc v North Oakland Dev Corp*, 163 Mich App 109, 113; 413 NW2d 744 (1987). However, defendant does challenge the trial court’s decision to admit the evidence under MRE 401 and MRE 403, which apply regardless of the basis for the admission of the evidence. We therefore limit our review accordingly.

Under MCL 768.27a(1), evidence of other sexual offenses committed against minors is admissible “to prove any issue, even the character of the accused,” to which it is relevant. *People v Pattison*, ___ Mich App ___, ___ NW2d ___ (Docket No. 276699, issued September 11, 2007), slip op at 1. Evidence is relevant if it has “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. Although relevant, the evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. MRE 403. Evidence presents the danger of unfair prejudice if there is a danger that marginally probative

evidence will be given undue weight by the jury, *People v Ortiz*, 249 Mich App 297, 306; 642 NW2d 417 (2001), lv den 467 Mich 854 (2002), or if it would lead the jury to decide the case on an improper basis such as emotion. *People v Vasher*, 449 Mich 494, 501; 537 NW2d 168 (1995); *People v Meadows*, 175 Mich App 355, 361; 437 NW2d 405 (1989).

The evidence was relevant because it tended to show that defendant was prone to engage in sexual acts with juvenile females to whom he had ready access. It also tended to make the victim's testimony more credible. The probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, *Pattison, supra*, slip op at 1-2, and the evidence was properly admitted under MCL 768.27a.

Affirmed.

/s/ Bill Schuette
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher