STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED April 23, 2009
v	No. 280228 Kent Circuit Court
RONALD RICHARD TAYLOR, JR., Defendant-Appellant.	LC Nos. 07-000136-FH & 07-000789-FH

Before: Wilder, P.J., and Meter and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions by a jury of 12 counts of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a) (sexual contact with a person under the age of 13). The trial court sentenced him to 10 to 15 years in prison. We affirm.

Defendant was charged with 15 counts of CSC II, involving several boys under the age of 13. The boys will be identified in this opinion as MN1, MN2, CB, MS, JT1, JT2, JT3, JA, and AV. Two counts were alleged against MN1, MN2, CB, and JT3, three counts were alleged against JT1, and single counts were alleged against MS, JT2, JA, and AV. The charges related to defendant's fondling of the minor children, who were his students.[1] The jury ultimately convicted defendant of 12 counts, for MN1, MN2 (two counts), CB, MS, JT1 (three counts), JT2, JT3, JA, and AV. The jury acquitted defendant with regard to a count involving JT3, a count involving CB, and a count involving MN1.

On appeal, defendant first argues that the trial court erred in refusing to allow the disclosure of certain privileged records concerning the children.[2] We review this issue for an abuse of discretion. *People v Stanaway*, 446 Mich 643, 680; 521 NW2d 557 (1994).

Defendant had argued for the release of the records below, and the trial court, in accordance with *Stanaway*, *supra* at 678-679, held an *in camera* review of some of the records

[1] The record indicates that one of the victims may not have been defendant's student but knew defendant through his (the victim's) brother.

[2] Defendant makes no argument that the records are not privileged.

and decided to allow the release of partial records of two of the children. Defendant contends that the trial court should have conducted a further review and released additional documents to the defense. Specifically, defendant refers to a sealed pleading in which he indicated that the released documents demonstrated a need for a further *in camera* review. We have reviewed this sealed pleading and the pertinent documents and we find that defendant was not entitled to a further *in camera* review or to additional documents. We agree with the trial court that, with regard to most of the children, his request amounts to no more than a "fishing expedition," prohibited by *Stanaway*, *supra* at 681-682. With regard to the child on which defendant focuses in his sealed pleading, the information he *already obtained* was adequate to assist him in his defense; it was speculative that the further records he desired would contain information that was more valuable. We find no abuse of discretion.

Defendant next contends that the trial court improperly admitted the testimony of LaNonna Norman, Rosie Baker, Jermaine Trimble, Kimberly Stapert, Tami Butler, Samantha Mitchell, and Taneya Villaneuva.[3] We review the admission of evidence for an abuse of discretion. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001).

LaNonna Norman testified that MN1, in October 2006, told her that defendant had touched him at JT1 and JT2's birthday party in June 2006. Norman indicated that MN1 pointed to his groin area when talking about having been touched. Norman testified that JT3 was in the room when MN1 made this statement, and she testified that JT3 said that defendant had touched him (JT3), too, although she did not remember whether JT3 specified the area of the body that defendant touched.

Norman additionally testified that, also in October 2006, MN2 told her that defendant had touched him "'[i]n [his] pants in the music room.'"[4]

Rosie Baker testified that she spoke with JT1, JT2, and JT3 in October 2006. According to Baker, JT2 told her that defendant had touched his "private part" and started crying while making the statement. Baker further testified that JT1 told her that defendant touched his "privacy" one day and tried to get JT1 to touch his "privacy." She testified that JT3 told her that defendant "put his hands in his pants."

Jermaine Trimble testified that MN2 disclosed to him that "some touching . . . had taken place." Trimble further testified that after being reluctant, JT2 also "admitted what was going on." Trimble also testified that JT1 stated that defendant had touched him "a few times" and that JT3 stated that defendant had touched him at a party and at church.

Kimberly Stapert testified that MS told her that defendant had touched his "privates." Tami Butler testified that CB told her that defendant had touched his "private areas." Samantha

[3] In his appellate brief, defendant refers to "eight witnesses" in discussing this issue, but the substance of his argument focuses only on these seven witnesses.

[4] Defendant claims in his appellate brief that Norman testified that MN2 claimed to have been touched by defendant at the June 2006 party, but the record does not reflect this testimony.

Mitchell testified that JA told her that defendant had touched his penis. Finally, Taneya Villaneuva testified that AV told her that defendant touched his "private part."

Defendant had a continuing objection to the above testimony at trial. The court, however, allowed the testimony under MRE 801(d)(1) as prior consistent statements. The court stated:

> I believe that based upon what I've heard, that the – that what the defense will be in this matter, that it is appropriate because I believe there is an implied charge against the child or the children, that they have been under either improper influence, or motive. Therefore, at this time, I'm going to allow the testimony to come in.

However, a statement is admissible under MRE 801(d)(1) only if it was made before the supposed motive to falsify arose. *People v Jones*, 240 Mich App 704, 707; 613 NW2d 411 (2000). Here, there is simply no indication that some type of motive to falsify arose after the children made the statements in question. Accordingly, MRE 801(d)(1) was not applicable. Nevertheless, we may affirm the trial court's admission of evidence if it reached the right result for the wrong reason. *People v Brownridge (On Remand)*, 237 Mich App 210, 217; 602 NW2d 584 (1999).

With regard to Norman's testimony, we conclude that some of her testimony was admissible under MRE 803A.[5] MRE 803A states, in pertinent part:

> A statement describing an incident that included a sexual act performed with or on the declarant by the defendant or an accomplice is admissible to the extent that it corroborates testimony given by the declarant during the same proceeding, provided:
>
> (1) the declarant was under the age of ten when the statement was made;
>
> (2) the statement is shown to have been spontaneous and without indication of manufacture;
>
> (3) either the declarant made the statement immediately after the incident or any delay is excusable as having been caused by fear or other equally effective circumstance; and
>
> (4) the statement is introduced through the testimony of someone other than the declarant.
>
> If the declarant made more than one corroborative statement about the incident, only the first is admissible under this rule.

[5] The prosecutor argued for the admission of the various testimony in question under MRE 803A.

Factors 1 and 4 were clearly satisfied with regard to Norman's testimony about MN1 and MN2. Moreover, factor 2 was satisfied, because Norman's testimony indicated that the statements were spontaneous. Finally, we conclude that factor 3 was also satisfied. MN1 testified that he felt "[b]ad" after being touched, and MN2 testified that he felt "[s]ad" after being touched. We find this testimony sufficient to conclude that the boys were experiencing emotions that would be likely to cause them to delay their reporting of the incidents.[6]

It appears that Norman's testimony regarding JT3 was not admissible under MRE 803A, however, because JT3 stated during his testimony that he told his mother about the touching, and this would have occurred before he gave a statement to Norman. Thus, the statement to Norman was not the first corroborative statement, as required by the rule. However, we find that the introduction of Norman's testimony regarding JT3 was harmless error, because it was cumulative to the testimony provided by JT3 himself, because it was largely non-specific, and because there was properly admitted MRE 404(b)(1) evidence and also testimony by Bobby Miller, defendant's jail-mate, that defendant admitted to fondling several of the children. See, e.g., *People v Rodriquez*, 216 Mich App 329, 332; 549 NW2d 359 (1996), and *People v Dixon*, 161 Mich App 388, 395; 411 NW2d 760 (1987) (discussing harmless error).[7]

With regard to Baker's testimony, defendant contends that the testimony concerning JT1 was not admissible because she was not the first person to whom JT1 made a corroborative statement. He alleges that JT1 testified that he told his father first. However, while JT1 did testify that he spoke to his father about being touched, he did not state definitively that his father was the first person he told. A review of the testimony of JT1, Baker, and JT1's father, although confusing at times, leaves us with the conclusion that JT1 told Baker first about being touched and that Baker then directed JT1 to talk to his father. Moreover, factors 1 and 4 were clearly satisfied with regard to JT1, and there was no indication of manufacture, satisfying factor 2. We also conclude that factor 3 was satisfied, because JT1 testified that defendant's touching made him feel "[n]ot healthy" and that it made his "stomach hurt." We conclude that this information was sufficient to infer that JT1 was experiencing emotions that caused him to delay reporting the touching. Baker's testimony regarding JT1 was admissible.

However, Baker's testimony regarding JT2 was not admissible under MRE 803A because JT2 was not under the age of 10 when he made the statement in question. Moreover, Baker's testimony concerning JT3 was not admissible under MRE 803A because she was not the first person to whom JT3 made a corroborative statement; he had spoken to his mother and to Norman first. However, given the clear testimony of JT2 and JT3 themselves, given the properly admitted MRE 404(b)(1) evidence, and given the testimony of Bobby Miller that defendant

[6] We note that the prosecutor presented an expert witness who opined that children often delay the reporting of sexual abuse.

[7] We note that we have reviewed the Supreme Court's peremptory reversal in *People v George*, 481 Mich 867; 748 NW2d 568 (2008), a case cited by defendant, and find it distinguishable because of the lack of evidence, in that case, corroborative of the defendant's guilt after the exclusion of the testimony of two witnesses.

admitted to fondling several of the children, we conclude that the admission of Baker's testimony regarding JT2 and JT3 was harmless.

With regard to Trimble, his testimony regarding MN2, JT1, and JT3 was inadmissible under MRE 803A because he was not the first person to whom the boys made a corroborative statement; MN2 had spoken with Norman first, JT1 had spoken to Baker first, and JT3 had spoken to his mother and to Norman. Moreover, Trimble's testimony regarding JT2 was inadmissible under 803A because he was not under the age of 10 when he made the statement. We find the admission of the testimony harmless, however. With regard to MN2, Trimble's testimony was cumulative to Norman's and to MN2's. With regard to JT1, Trimble's testimony was cumulative to Baker's and to JT1's. With regard to JT2, Trimble's testimony was cumulative to JT2's, and, to a certain extent, to JT1's.[8] With regard to JT3, Trimble's testimony was cumulative to JT3's and was also very brief. Moreover, Miller testified that defendant admitted to fondling several of the children, and there was also probative MRE 404(b)(1) testimony admitted at trial. Under the circumstances, we find no basis for reversal.

Stapert's testimony was admissible under MRE 803A. Contrary to defendant's assertion in his appellate brief, the record reveals that Stapert was the first adult MS told about the touching. Moreover, the statement was spontaneous, and it appears that it was made immediately after the incident. Therefore, factors 2 and 3 were satisfied, and factors 1 and 4 were also clearly satisfied.

Butler's testimony was also admissible under MRE 803A. Factors 1 and 4 were clearly satisfied, she was the first person CB told about the touching, and there was no indication of manufacture. Moreover, Butler testified that CB was "hysterical" when making the statement. This is evidence that CB's emotional state was such that any delay in reporting was excusable.

Mitchell's testimony was also admissible under MRE 803A. Factors 1 and 4 were clearly satisfied; contrary to defendant's allegation on appeal, she was the first person JA told about the touching; the statement was spontaneous; and the statement was made within one day of the touching.

Villaneuva's testimony was also admissible under MRE 803A. Factors 1 and 4 were clearly satisfied, she was the first person AV told about the touching, there was no indication of manufacture, and it could be inferred from AV's crying during his statement that any delay in reporting the touching was excusable.

Defendant next argues that the trial court erred in limiting the number of character witnesses he could present at trial. We review this issue for an abuse of discretion. *People v Nemer*, 218 Mich 163, 169; 187 NW 315 (1922).

---

[8] JT1 testified that he remembered hearing JT2 crying on a camping trip. JT2 testified that he cried after being touched by defendant on a camping trip and that he called Trimble while crying (without disclosing the true reason for his tears). Trimble testified that JT2 called him while on a camping trip and was distraught and that Trimble later learned it was because JT2 had been touched by defendant.

Defendant wanted to present numerous character witnesses, and the trial court ruled that he would be limited to four, stating:

> Also, we're going to limit character witnesses pursuant to MRE 611 and I think it's reasonable that you would have no more than four character witnesses in this matter. He can pick one of the people from the church. He can pick one of his relatives, one of the teachers, one of his friends. But we're not going to put 40 or 50 witnesses on that deal with character.

We find no abuse of discretion. MRE 611 states that the trial court

> shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of truth [and] (2) avoid needless consumption of time . . . .

As noted in *Nemer, supra* at 169, a trial court has the power to limit the number of character witnesses. Here, the court made a reasonable decision to allow character witnesses from four vital areas of defendant's life while at the same time avoiding the "needless consumption of time." MRE 611. Contrary to defendant's argument on appeal, the trial court did not act arbitrarily in allowing *four* character witnesses; there was a basis for this number because, as noted, the trial court decided to allow a character witness from four vital areas of defendant's life. We find no basis for reversal.

Defendant next argues that the trial court erred in admitting the testimony of Kathryn Roodvoets. Again, we review the admission of evidence for an abuse of discretion. *Aldrich, supra* at 113.

Roodvoets, an intern at defendant's school, testified that defendant often hugged children inappropriately by pulling them into his groin area or putting them on his lap. She stated that he would also "pick the children up and manhandle them." She also testified that defendant would sit close to children on a couch. She testified about a specific incident when she walked into defendant's classroom and saw him on one knee in front of a child whose shirt was up; defendant zipped the child's pants and told him to get a better button or belt. Defendant and the child were alone in the room. Roodvoets also stated that she had seen defendant alone with a child by his car.

Defendant objected to the prosecutor's offering Roodvoets's testimony. The prosecutor argued that the testimony was allowable under MRE 404(b) to show a scheme or plan, and the trial court agreed.

MRE 404(b)(1) states that evidence of "other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." This evidence may, however, be admissible "for other purposes, such as . . . scheme, plan, or system in doing an act . . . ." *Id.* To be admissible under MRE 404(b)(1), evidence must be offered for a proper purpose, it must be relevant, and its probative value must not be substantially outweighed by the danger of unfair prejudice. *People v Gibson*, 219 Mich App 530, 532; 557 NW2d 141 (1996).

Here, where the complainants were mostly minor students of defendant, it is clear that Roodvoets's testimony was properly offered to show that defendant had a systematic plan of becoming physically close with and then sexually assaulting his minor students or their siblings, when the opportunity arose. Moreover, the testimony was relevant under MRE 401 and 402. It had a tendency "to make the existence of any fact that is of consequence . . . more probable than it would be without the evidence." MRE 401. The fact that defendant engaged in unusual physical closeness with his students made it more likely that he completed his "scheme" by sexually assaulting the minors. Finally, the danger of unfair prejudice did not substantially outweigh the probative value of the testimony. Roodvoets testified about questionable, unusual, and relevant behavior but did not testify about any criminal acts. The danger of unfair prejudice was minimal. We find no basis for reversal.[9]

Defendant next argues that the trial court erred in allowing the testimony of MB, a minor child who provided MRE 404(b)(1) evidence, without first granting a continuance. We review both the admission of evidence and the denial of a continuance for an abuse of discretion. *Aldrich*, *supra* at 113; *People v Snider*, 239 Mich App 393, 421; 608 NW2d 502 (2000).

On a Monday morning before trial, defense counsel indicated that on the previous Friday he had received a supplemental police report indicating that the police had recently interviewed another potential witness, MB, a minor child. MB had been denying any abuse for months but had, as of Friday, "changed his story." The prosecutor stated:

> Your Honor, as soon as the detective realized she had failed to interview this witness, and I think to begin to give you some context, it is this witness that tells one other kid, watch out for the defendant. He touches kids, but he didn't touch me. After this is brought out in the open, this matter becomes public, the mother asks him and he acknowledges that the defendant had touched him, but she never reported it to the police because she's – and she told the detective when we did finally interview her, was that there were other kids that had come forward, charges had been bound over, and she wasn't going to bring her child forward.
>
> So the detective talked to her, says, can you please allow me to interview him, she does, he discloses. She puts together a report, give [sic] it to me, and then I, actually drove it over to the attorney's office.

The prosecutor indicated that he would call the child as a witness later in the trial to give defense counsel a chance to talk to him before his testimony. Defense counsel requested a continuance, but the trial court denied it, indicating that the prosecutor had "good cause shown based on the number of witnesses, the circumstances as to how this child was just recently interviewed." The court further stated that the witness would be made available for defense counsel to interview.

---

[9] Defendant makes a bald assertion that Roodvoets's testimony was inappropriate because she was not qualified as an expert and no foundation was laid for her testimony. This assertion is inadequately briefed and we therefore do not address it. *People v Watson*, 245 Mich App 572, 587; 629 NW2d 411 (2001).

We find no abuse of discretion, given the reasons for denial as articulated by the trial court. Significantly, the trial court ensured that defense counsel would have a chance to interview MB before his testimony. Moreover, as noted in *People v Coy*, 258 Mich App 1, 18-19; 669 NW2d 831 (2003), the denial of a continuance is not grounds for reversal unless a defendant demonstrates prejudice. Defendant has not done so in this case. He makes no attempt to explain how a continuance would have definitively helped his defense. Reversal is unwarranted.[10]

Defendant next argues that the trial court erred in sentencing him outside of the range recommended by the sentencing guidelines. The guidelines produced a recommended minimum range of 36 to 71 months. The court sentenced defendant to 10 to 15 years' imprisonment.

A court may depart from the range produced by the sentencing guidelines if it has a substantial and compelling reason to do so. *People v Babcock*, 469 Mich 247, 255; 666 NW2d 231 (2003); MCL 769.34(3). A substantial and compelling reason must be "objective and verifiable" and must "keenly or irresistibly" grab the attention of the court. *Babcock*, *supra* at 257 (internal citations and quotation marks omitted). Such a reason exists only in exceptional cases. *Id*.

As stated in *Babcock*, *supra* at 260:

> Because the trial court must articulate on the record a substantial and compelling reason to justify the particular departure, if the trial court articulates multiple reasons, and the Court of Appeals determines that some of these reasons are substantial and compelling and some are not, the panel must determine the trial court's intentions. That is, it must determine whether the trial court would have departed and would have departed to the same degree on the basis of the substantial and compelling reasons alone

Also,

> [t]he court shall not base a departure on an offense characteristic or offender characteristic already taken into account in determining the appropriate sentence range unless the court finds from the facts contained in the court record, including the presentence investigation report, that the characteristic has been given inadequate or disproportionate weight. [MCL 769.34(3)(b).]

We review "whether a factor exists . . . for clear error, whether a factor is objective and verifiable . . . de novo, and whether a reason is substantial and compelling . . . for abuse of discretion . . . ." *Babcock*, *supra* at 265.

[10] We reject defendant's arguments that the evidentiary rulings in this case infringed on his constitutional rights or that cumulative error in this case mandates reversal. His arguments are merely a rehash of issues already addressed in this opinion.

The trial court gave several reasons for its sentencing decision, stating, in part:

> Prior Record Variable [7] scores 20 points for two or more subsequent or concurrent convictions. That is the maximum number of points that you can receive under Prior Record Variable – PRV 7. Here, you have 12 convictions. This is six times what is taken into consideration in calculating the Guidelines. *I believe that this point alone would justify the sentence that I would be imposing in this matter.*
>
> However, I believe there are additional reasons. These Guidelines do not take into effect [sic] what I perceive to be an aggravated form of victimization that is present in this matter. Most all of these children were at-risk children which the defendant got close to them [sic] under the guise of mentoring them.
>
> I also do not believe that the Guidelines properly reflect the similarity of all 12 of these crimes. And there is a repeating pattern of criminality.
>
> I believe that the 12 convictions for CSC 2nd[] also establish that you, sir, are a pedophile. The fact that you are a pedophile is not taken into consideration in the Sentencing Guidelines.
>
> * * *
>
> You, sir, are someone that society needs to be protected from.
>
> Quite frankly, I believe that you're every parent's worst nightmare. You are a pedophile who preys upon our children. You used your teaching degree to establish your own private hunting ground to satisfy your perversion.
>
> Teaching is an honorable profession. You have degraded that profession. Your actions will have a chilling effect on good teachers. Your actions will cause good teachers to think twice before they are willing to appropriately hug our children.
>
> Most significantly, you have traumatically and severely injured these children. I am imposing this sentence for punishment, rehabilitation, to protect society and for deterrence. [Emphasis added.]

The trial court was correct in noting that Prior Record Variable 7 allows for a maximum of 20 points for "2 or more subsequent or concurrent convictions . . . ." MCL 777.57(1)(a). Defendant contends that, nevertheless, PRV 7 provided no reason to depart from the recommended range because Offense Variable (OV) 12 and OV 13 adequately accounted for the convictions here. However, OV 12 allows only for a maximum of 25 points if "[t]hree or more contemporaneous felonious criminal acts involving crimes against a person were committed . . . ." MCL 777.42(1)(a). OV 13 allows for 25 points if "[t]he offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person . . . ." MCL 777.43(1)(b). Moreover, crimes taken into account by OV 12, except for crimes related to an organized

criminal group, are not to be taken into account in OV 13. MCL 777.43(2)(c). In this case, defendant was assessed 25 points for OV 13 and zero points for OV 12.

The trial court was correct that the sentencing guidelines inadequately accounted for the 12 convictions at issue here. The number of defendant's convictions was objective and verifiable and was a factor that keenly grabs the attention of the court, and the guidelines were woefully inadequate in taking this high number of convictions into account. The trial court did not abuse its discretion in concluding that this factor was a substantial and compelling reason to depart from the recommended range by 49 months. As noted, the court made clear that this factor *alone* merited the departure, and we agree. Therefore, we need not address the additional reasons for departure provided by the court. See, e.g., *Babcock, supra* at 260.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Patrick M. Meter
/s/ Deborah A. Servitto