

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH NATHAN BROOM,

Defendant-Appellant.

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UNPUBLISHED

August 4, 2009

No. 284311

Wayne Circuit Court

LC No. 07-006640-FH

Before: Saad, C.J., and Sawyer and Borrello, JJ.

PER CURIAM.

A jury convicted defendant of four counts of third-degree criminal sexual conduct, MCL 750.520d(1), and the trial court sentenced him to four concurrent prison terms of 13-1/2 to 22-1/2 years. For the reasons set forth below, we affirm.

**I. Facts**

When the victim was 13 years old, she began to baby-sit for defendant's children at his house. When defendant would drive the victim home, he made attempts to kiss the victim and he soon began to sexually abuse her. According to the victim, she fell in love with defendant and they carried on a romantic and sexual relationship. The victim testified that defendant showed her pornography and gave her money and other gifts. The victim further testified that defendant regularly engaged in sexual acts with her, at various locations. Defendant would sign the victim out of school as her father, or she would sneak out of school to meet him. Two police officers testified that on the afternoon of November 13, 2003, they approached defendant's car in a secluded area near a McDonald's restaurant, and saw two people kissing. An officer asked defendant if he was there "making out with his girlfriend," and defendant responded affirmatively and told the officers that the victim was 18 years old. The victim told the officers that she was actually 14 years old. As a result of this incident, defendant was convicted of contributing to the delinquency of a minor; the victim and her mother also took out a personal protection order against defendant. The victim testified that she ran away several times to be with defendant, and would stay in his brother's apartment or in defendant's van. On one occasion, the police located the victim in defendant's brother's apartment. Ultimately, the victim was placed in three different foster homes, but continued her relationship with defendant.

The victim testified that when she was about 15 years old, she wanted to end the relationship, but defendant would "hunt her down" and physically assault her. Witnesses from

the victim's school district testified that on May 21, 2004, defendant was in the teacher's parking lot using a cellular phone. He entered the school without permission, was chased by a security guard, and later went to the victim's class looking for her; an altercation ensued and security had to be summoned. Defendant fled, but his license plate was reported to the police. On May 24, 2004, defendant returned to the school, identified himself as the victim's family member, and asked if he had been reported to the police or the victim's parent. Defendant was cautioned that he was trespassing, but his van was thereafter observed on the school premises two more times. The victim's friend testified that on August 4, 2004, they were walking to the victim's foster home when defendant emerged from the bushes and chased the victim until she ran into the house. Witnesses testified that on September 23, 2004, defendant physically assaulted the victim outside her school and a bystander had to intervene to stop the assault. During the incident, defendant professed his love for the victim and attempted to forcibly drag her from the premises. Sometime later, the victim disclosed the sexual assaults. At trial, she explained that she was not "scared of [defendant] any more."

The 36-year-old defendant denied having a sexual relationship with the victim, and maintained that he was a father figure to her. He testified that the victim made the false accusations against him because he would not allow her to live in his home. He offered non-incriminating explanations for this presence at the victim's school and in the McDonald's parking lot and presented the testimony of his girlfriend, who maintained that the victim was untruthful about her relationship with defendant.

## II. Other Acts Evidence

Defendant argues that his convictions should be reversed because the trial court improperly admitted evidence of uncharged conduct involving the victim.

Before trial, the prosecution moved to admit evidence of other acts between defendant and the victim under MRE 404(b), to present a complete picture of the nature of their relationship, to explain the victim's delay in reporting the incidents, to rebut defendant's denial of the relationship, and to bolster the victim's testimony. Defendant challenges the admission of four acts: (1) the November 13, 2003, incident during which defendant and the victim were found kissing near McDonald's; (2) the August 4, 2004, incident in which defendant hid in the bushes at the victim's foster home and chased her; (3) the May 2004 episode when defendant searched for the victim at her school; and (4) the September 23, 2004, incident in which defendant attempted to drag the victim away from her school. Defendant maintained that the acts are irrelevant, dissimilar, and prejudicial, and that the victim's testimony was sufficient to establish the relevant circumstances of their relationship without reference to these other acts. The trial court granted the prosecutor's motion.

A trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003). A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes. *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008). If there is an underlying question of law, such as whether admissibility is precluded by a rule of evidence, we review that question of law de novo. *McDaniel*, *supra*.

MRE 404(b)(1) prohibits “evidence of other crimes, wrongs, or acts” to prove a defendant’s character or propensity to commit the charged crime. See also *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004). But other acts evidence is admissible under MRE 404(b)(1) if it is (1) offered for a proper purpose, i.e., one other than to prove the defendant’s character or propensity to commit the crime, (2) relevant to an issue or fact of consequence at trial, and (3) sufficiently probative to outweigh the danger of unfair prejudice, pursuant to MRE 403.<sup>1</sup> *People v Starr*, 457 Mich 490, 496-497; 577 NW2d 673 (1998); *People v VanderVliet*, 444 Mich 52, 55, 63-64, 74-75; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). In application, the admissibility of evidence under MRE 404(b)(1) necessarily hinges on the relationship of the elements of the charge, the theories of admissibility, and the defenses asserted. *Id.* at 75.

Defendant has not established an abuse of discretion. The evidence was not offered to show that defendant had a bad character. Rather, it assisted the jury in weighing the complainant’s credibility and to rebut any claim of fabrication, particularly because defendant denied having a sexual relationship with the victim and characterized his role as the victim’s father figure. Evidence that defendant was in a parking lot “making out” with the victim, that he hid in bushes and chased her, that he trespassed on school grounds in an attempt to remove her from school, and that he professed his love for her while attempting to drag her off school grounds directly undercut his denial of an inappropriate and romantic relationship. Further, testimony that defendant sexually assaulted the victim on four isolated occasions between 2002 and 2004, although the victim and defendant continued to interact, may have seemed incredible without the additional testimony that the relationship was romantic, ongoing, and culminated with defendant physically assaulting the victim in an attempt to compel its continuation. Moreover, the other acts evidence was admissible to explain the victim’s delay in reporting the abuse. See *People v Dunham*, 220 Mich App 268, 273; 559 NW2d 360 (1996). We hold that the evidence is relevant to describe the nature of the relationship between defendant and his victim and this does not constitute propensity evidence.

Further, defendant has not demonstrated that the evidence unfairly prejudiced him under MRE 403. The acts described are, of course, damaging to defendant’s case, but are of his making and contradict his version of the nature of the relationship. The admission of these acts does not violate MRE 403.

### III. Prosecutor’s Conduct

Defendant says, unpersuasively, that the prosecutor impermissibly asked him to comment on the credibility of the victim. Because defendant failed to object to the prosecutor’s conduct below, this Court reviews his unpreserved claims for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 752-753, 763-764; 597 NW2d 130 (1999). This Court will not

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<sup>1</sup> 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. The relevancy “threshold is minimal: ‘any’ tendency is sufficient probative force.” *People v Crawford*, 458 Mich 376, 390; 582 NW2d 785 (1998).

reverse if the alleged prejudicial effect of the prosecutor's conduct could have been cured by a timely instruction. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001) (citation omitted).

During the prosecutor's cross-examination of defendant, the following exchange occurred:

Q. Do you know of any reason that [the victim] would come in here and say those things?

A. Yes.

Q. What is that, sir?

A. Because we told her she can't live [with] us. She too [sic] much trouble.

Q. She lives with you now?

A. She got out of foster care. She asked to live with us.

Q. And so that's the reason?

A. She said she did not want to go home. Her mother has not changed.

Q. That's the reason she came in here and has admittedly said that she lied in prior proceedings to protect you. Never had any relationship with other than father-daughter. Is that your testimony?

A. Yes.

Though it is improper for the prosecutor to ask a witness to comment on the credibility of another witness because credibility is a determination for the trier of fact, *People v Buckey*, 424 Mich 1, 17; 378 NW2d 432 (1985), here defendant has not demonstrated that his substantial rights were affected. *Carines, supra*. In *Buckey*, our Supreme Court noted that this type of error is harmless if the defendant "dealt rather well with the questions," and here this questioning did not harm defendant. *Id.* Indeed, defendant responded to the questions by attacking his victim's credibility and advancing his theory for why the victim falsely accused him, and nothing in the record suggests that defendant suffered any harm. To the contrary, had the jury credited his testimony, this could have helped defendant's case. Defendant and the victim gave conflicting testimony, and the jury was aware that the witnesses disagreed about the nature of their relationship. Furthermore, a timely objection "could have cured any prejudice, either by precluding such further questioning or by obtaining an appropriate cautionary instruction." *Id.* at 18 (citation omitted). And, though defendant did not object to the questions, the trial court properly instructed the jury that it was to assess and determine the credibility of the witnesses. And, though we hold that this line of questioning did not prejudice defendant, this instruction was sufficient to dispel any possible prejudice. *People v Long*, 246 Mich App 582, 588; 633 NW2d 843 (2001). For all of these reasons, reversal is not warranted on the basis of this unpreserved issue.

Affirmed.

/s/ Henry William Saad

/s/ David H. Sawyer

/s/ Stephen L. Borrello