

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARK SHAWN MORGAN,

Defendant-Appellant.

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UNPUBLISHED

January 24, 2012

No. 302716

Eaton Circuit Court

LC No. 10-020062-FC

Before: SAWYER, P.J., and WHITBECK and M. J. KELLY, JJ.

PER CURIAM.

Defendant appeals as of right following his jury trial convictions of three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a) (victim under 13 years old). He was sentenced to 108 to 240 months in prison. We affirm.

Defendant first argues that the trial court should have required the prosecution to provide more specificity regarding the dates of the alleged incidents. Under MCR 6.112(D), the information should state the time of the alleged offense “[t]o the extent possible.” If the defendant files a motion, the trial court may order the prosecutor to provide a bill of particulars describing the essential facts of the offense. MCR 6.112(E). The trial court may require the prosecution to state the time “as nearly as circumstances will permit” so that the defendant can meet the charge. MCL 767.51. The trial court’s decision is reviewed for an abuse of discretion. *People v Naugle*, 152 Mich App 227, 233; 393 NW2d 592 (1986); *People v Harbour*, 76 Mich App 552, 557; 257 NW2d 165 (1977). The court should consider the nature of the crime, the victim’s ability to specify the date, the prosecutor’s efforts to determine the date, and the prejudice to the defendant in preparing his defense. *Naugle*, 152 Mich App at 233-234.

It was reasonable that the child did not remember the exact dates, which occurred when she was aged 5 to 11. See *Naugle*, 152 Mich App at 235. Further, it was unrealistic for defendant to create a viable alibi defense when the child, who was then his stepdaughter, lived with him and claimed multiple episodes of abuse over many years. The best defendant could do was the evidence he presented that he worked long hours and was never home alone with the children. The prosecutor was not required to establish exact dates and times of day, regardless of defendant’s desire to use an alibi defense. See *People v Dobek*, 274 Mich App 58, 81-84 & n 13; 732 NW2d 546 (2007). The trial court did not abuse its discretion in denying defendant’s motion for a bill of particulars. *Naugle*, 152 Mich App at 233.

Defendant next argues that the trial court abused its discretion in allowing testimony regarding other similar incidents against the same victim. Contrary to defendant's assertion on appeal, the court allowed the evidence under MCL 768.27a, which in cases where the defendant is charged with a listed offense, including first-degree criminal sexual conduct against a minor, permits relevant evidence that the defendant committed another listed offense against a minor. The statute was intended to allow a broader range of evidence than that allowed under MRE 404(b). *People v Smith*, 282 Mich App 191, 204; 772 NW2d 428 (2009).<sup>1</sup>

Regardless, the evidence in the present case was admissible under MRE 404(b). Child victims of criminal sexual conduct may testify that they suffered additional acts of sexual abuse by the defendant, who shared their home for years, because the victims' credibility would otherwise be seriously undermined and the acts were part of a pattern of abuse. See *People v DerMartzex*, 390 Mich 410, 414-415; 213 NW2d 97 (1973); *People v Layher*, 238 Mich App 573, 585-586; 607 NW2d 91 (1999), aff'd on other grounds 464 Mich 756; 631 NW2d 281 (2001); *People v Puroll*, 195 Mich App 170, 171; 489 NW2d 159 (1992); *People v Dreyer*, 177 Mich App 735, 738-739; 442 NW2d 764 (1989). Further, the probative value was not substantially outweighed by the risk of unfair prejudice, confusion of issues, or misleading the jury. See MRE 403. The only unfair prejudice defendant cites is the child's inability to identify exact dates, which was not realistic under the circumstances. The evidence was highly probative because it made her testimony more credible and explained why exact dates did not stand out in her memory.

Defendant argues next that the trial court abused its discretion when it prohibited his friend and co-worker from testifying that he was falsely accused of improperly touching his sons about seven months after the accusations were made against defendant, the co-worker's daughter told him his now ex-wife made the accusations, and the wives of the two men were friends. The trial court is granted broad discretion to determine whether the probative value of evidence is substantially outweighed by the risk of unfair prejudice, confusion of issues, or misleading the jury. *People v Taylor*, 252 Mich App 519, 521-522; 652 NW2d 526 (2002). Defendant intended to imply that his ex-wife gave her friend the idea to make false accusations because she encouraged her own child to falsely accuse defendant. However, this was merely speculative, not based on any direct evidence. Because this was a close decision, it does not constitute abuse of discretion. See *People v Ackerman*, 257 Mich App 434, 442; 669 NW2d 818 (2003).

Finally, defendant argues that the trial court erred when it instructed the jury that it was not necessary that there be evidence other than the child's testimony, if the testimony proved guilt beyond a reasonable doubt. MCL 750.520h states that the victim's testimony need not be corroborated in a criminal sexual conduct prosecution.

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<sup>1</sup> The statute has been found constitutional. *People v Pattison*, 276 Mich App 613, 619-620; 741 NW2d 558 (2007). However, the Supreme Court has pending appeals addressing this issue; see *People v Pullen*, 489 Mich 864; \_\_\_ NW2d \_\_\_ (2011), and *People v Watkins*, 489 Mich 863; 795 NW2d 147 (2011).

Jury instructions should be read as a whole. *People v McGhee*, 268 Mich App 600, 606; 709 NW2d 595 (2005). It is presumed that juries follow the instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). The trial court also instructed the jury that they should find defendant not guilty unless they were satisfied beyond a reasonable doubt that he was guilty, all the testimony and exhibits were evidence, the jurors' decision should be based on all the evidence regardless which party produced it, they must decide whether the testimony and evidence they believed proved guilt beyond a reasonable doubt, and evidence of good character alone could sometimes create a reasonable doubt. The jurors were told that if they had reasonable doubt "after carefully considering all the evidence," they must find defendant not guilty. The instructions as a whole accurately explained the need to weigh all evidence to determine guilt beyond a reasonable doubt, and there was no indication the jury did not follow all the instructions.

Affirmed.

/s/ David H. Sawyer  
/s/ William C. Whitbeck  
/s/ Michael J. Kelly