

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOEY ALLEN SIMMONS,

Defendant-Appellant.

UNPUBLISHED

November 22, 1996

No. 186455

LC No. 94-004557-FC

Before: Saad, P.J., and Griffin, and M. H. Cherry,* JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree criminal sexual conduct (CSC I), MCL 750.520b; MSA 28.788(2), and sentenced to a term of six to twenty years' imprisonment. He appeals of right, and we affirm.

Defendant's victim was thirteen years old and was the daughter of friends of defendant and his wife. The victim testified that she frequently spent the night at defendant's home and that he had begun assaulting her when she was nine years old. The victim's parents became concerned about her behavior and questioned her. She informed them of the assaults and they notified the police, who investigated the allegations. Defendant confessed to the police. At trial, defendant presented an alibi defense. He claimed that his confession had been untruthful and had been induced by promises of leniency. The trial court held a *Walker*¹ hearing and found that the confession was voluntary.

Defendant maintains that the trial court erred in finding his confession to have been voluntary and in permitting it to go before the jury. We disagree. A trial court's ruling on the issue of voluntariness is reviewed by this Court de novo. *People v Robinson*, 386 Mich 551, 557; 194 NW2d 709 (1972); *People v Brannon*, 194 Mich App 121, 131; 486 NW2d 83 (1992). However, deference is given to the trial court's assessment of the weight of the evidence and credibility of the witnesses, and the trial court's findings will not be reversed unless they are clearly erroneous. *People v Young*, 212 Mich App 630, 634; 538 NW2d 456 (1995). Where a determination of voluntariness depends largely on witness credibility, this Court should defer to the trial court's findings. *People v Heffron*, 175 Mich App 543,

* Circuit judge, sitting on the Court of Appeals by assignment.

547; 438 NW2d 253 (1988). Defendant averred that he was innocent and that he had confessed only because the police officer who interviewed him had advised that the police would “come down real hard” if he did not but would “go easy” on him if he did so. The police officer denied that any promises of leniency had been made. The trial court found the police officer to have been the more credible witness, and there is nothing in the record that indicates that the trial court's finding was clearly erroneous.

Next, defendant asserts that admission of the victim's testimony regarding uncharged sexual assaults violated MRE 404(b), which generally prohibits evidence of other wrongs. We disagree. This Court reviews trial court determinations regarding the admissibility of evidence for an abuse of discretion. *People v Davis*, 199 Mich App 502, 517; 503 NW2d 457 (1993). Similar acts evidence may be introduced under the following circumstances:

First, that the evidence be offered for a proper purpose under Rule 404(b); second, that it be relevant under Rule 402 as enforced through Rule 104(b); third, that the probative value of the evidence is not substantially outweighed by unfair prejudice; fourth, that the trial court may, upon request provide a limiting instruction to the jury. [*People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993).]

Here, the victim's testimony was offered to bolster her credibility, which was a proper purpose. In *People v DerMartex*, 390 Mich 410, 414-415; 213 NW2d 97 (1973), the Supreme Court held:

The principal issue confronting a jury in most statutory rape cases, and particularly so where the charged offense is *attempted* statutory rape, is the credibility of the alleged victim. Limiting her testimony to the specific act charged and not allowing her to mention acts leading up to the assault would seriously undermine her credibility in the eyes of the jury. Common experience indicates that sexual intercourse and attempts thereat are most frequently the culmination of prior acts of sexual intimacy. [Emphasis in original.]

While *DerMartex* was decided prior to the adoption of the Michigan Rules of Evidence, it was cited recently in *People v Wilson*, 196 Mich App 604; 439 NW2d 471 (1992), a CSC case involving child victims, both of whom testified against the defendants and whose testimony contained details of prior sexual offenses committed against them. This Court concluded:

[O]ur review of the challenged testimony of each of the victims leads us to the conclusion that the testimony challenged by [defendant] would be admissible pursuant to MRE 404(b) and *People v DerMartex*, 390 Mich 410; 213 NW2d 97 (1973). [*Wilson, supra* at 615.]

Finally, defendant argues that he was unfairly prejudiced by the admission of the prior acts testimony, because it deprived him of his alibi defense. We disagree. Witnesses for the prosecution, including the victim, her parents, and another witness testified that defendant assaulted the victim on March 25, 1994. Defendant presented an alibi for that date that was corroborated by the testimony of

his parents, his brothers, his wife, and the girlfriend of one of his brothers. The jury was charged with evaluating the credibility of those witnesses and it apparently believed the prosecution witnesses. In addition, defendant confessed to the crime. The record does not indicate that admission of the victim's testimony about other assaults unfairly prejudiced defendant.

Affirmed.

/s/ Henry William Saad

/s/ Richard Allen Griffin

/s/ Michael H. Cherry

¹ *People v Walker*, 374 Mich 331; 132 NW2d 87 (1965).