

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY EUGENE PRATT,

Defendant-Appellant.

UNPUBLISHED
December 5, 2000

No. 221046
Ingham Circuit Court
LC No. 98-073249-FH

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of criminal sexual conduct in the second degree (CSC II), MCL 750.520c(1)(a); MSA 28.788(3)(1)(a), entered after a jury trial. We affirm.

Complainant, who was nine years old at the time the charged incident occurred, testified that while giving her a ride to the school bus stop, defendant tickled her in her breast and groin areas. A few days later, defendant gave her another ride. After she left the car, defendant offered her money to reenter the car. When she refused to do so, defendant threatened to tickle her a second time. Complainant's mother testified that she contacted the police after complainant reported the second incident to her. Defendant testified that he tickled complainant to make amends for frightening her after he grabbed her thigh when she slammed the car door. Defendant denied subsequently offering complainant money to reenter his car or threatening to tickle her. The jury convicted defendant as charged.

Evidence of other crimes, wrongs, or acts is inadmissible to prove the character of a person in order to show conformity therewith. Such evidence may be admissible to show motive, opportunity, intent, preparation, scheme, plan, or system in doing an act. MRE 404(b)(1). To be admissible under MRE 404(b)(1), other acts evidence must satisfy three requirements: (1) it must be offered for a proper purpose; (2) it must be relevant; and (3) its probative value must not be substantially outweighed by its potential for unfair prejudice. A proper purpose is one other than establishing the defendant's character to show a propensity to commit the offense. *People v Starr*, 457 Mich 490, 496; 577 NW2d 673 (1998); *People v VanderVliet*, 444 Mich 52, 74; 508

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

NW2d 114 (1993), modified 445 Mich 1205; 520 NW2d 338 (1994). We review a trial court's decision to admit other acts evidence for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998).

Defendant argues that he was denied a fair trial by admission of evidence of a subsequent, uncharged bad act, i.e., the alleged attempted bribe and threat. We disagree and affirm. The evidence was offered for the proper purposes of bolstering the credibility of complainant and explaining the delay in reporting the original incident. *People v Wright*, 161 Mich App 682, 688-689; 411 NW2d 826 (1987). Defendant denied touching complainant in order to achieve sexual arousal or gratification. Such touching is an element of CSC II. *People v Piper*, 223 Mich App 642, 645; 567 NW2d 483 (1997). However, no evidence showed that on the subsequent occasion, defendant had any reason to touch complainant. The evidence was relevant, *Crawford*, *supra*, 388-390, as to defendant's actual intent during the original incident. The probative value of the evidence was not outweighed by the danger of unfair prejudice. MRE 403. The evidence went to the ultimate issue in dispute, i.e., whether defendant touched complainant for the purpose of sexual arousal or gratification. *Piper*, *supra*.

Because defendant did not object to the evidence or request a limiting instruction, the trial court was under no duty to give such an instruction sua sponte. Our review is limited to determining whether admission of the evidence resulted in manifest injustice. *People v Rice (On Remand)*, 235 Mich App 429, 438-439, 444; 597 NW2d 843 (1999). We conclude that because the other acts evidence was proper under *VanderVliet*, *supra*, its admission did not result in manifest injustice to defendant.

The prosecution failed to give reasonable notice as required by MRE 404(b)(2), that it intended to introduce other acts evidence under MRE 404(b)(1). Because defendant did not object to the lack of notice and thus failed to preserve the issue, our review is limited to whether the unpreserved error affected defendant's substantial rights. *People v Grant*, 445 Mich 535, 545; 520 NW2d 123 (1994). We conclude that because the other acts evidence was admissible under *VanderVliet*, *supra*, the lack of notice did not affect defendant's substantial rights. Had defendant been given notice of the prosecution's intent, he could not have mounted a successful challenge to the introduction of the evidence.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber