

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS ALAN SCHRAM,

Defendant-Appellant.

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UNPUBLISHED

February 8, 2002

No. 235340

Emmett Circuit Court

LC No. 01-001711-FC

Before: Sawyer, P.J., and O’Connell and Zahra, JJ.

PER CURIAM.

In this interlocutory appeal, defendant appeals by delayed application for leave granted from an order granting the prosecution’s motion to admit other acts evidence under MRE 404(b). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant, a registered nurse working in a mental health unit at Lockwood Hospital in Petoskey, was originally charged with a total of eight counts of first- and second-degree criminal sexual conduct involving three of his adult female patients. Defendant was bound over on seven of the eight counts and successfully moved to sever the charges for three separate trials. The prosecution then filed a motion under MRE 404(b) to introduce in the first trial evidence of defendant’s alleged actions against the other two complainants. In relevant part, the prosecution argued that the evidence was offered for a proper purpose, namely, to show defendant’s plan, scheme, or design. The prosecution noted that the victims were all defendant’s adult patients in lock-up areas who were on medication, that each incident involved isolating the victim in either a bathroom or bedroom, and that the incidents took place over a relatively short time period. Defendant countered that each incident involved different circumstances and noted that the women had different mental illnesses causing each to respond differently. Relying primarily on *People v Sabin (After Remand)*, 463 Mich 43; 614 NW2d 888 (2000), the trial court found that the incidents were sufficiently similar to make them admissible for the purpose of showing plan, scheme, or design.

On appeal, defendant argues that the trial court abused its discretion in granting the prosecution’s motion to introduce the other acts evidence. Specifically, he contends that (1) the prosecution did not meet its burden of showing a proper non-character purpose for the other acts evidence, and (2) the prosecution did not show that the acts were sufficiently similar to support an inference that they were part of a common plan, scheme or system. “The decision whether evidence is admissible is within the trial court’s discretion and should only be reversed where

there is a clear abuse of discretion.” *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). An abuse of discretion exists when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling made. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996).

We find no abuse of discretion in this case. To be admissible under MRE 404(b) the other acts evidence must first be offered for a proper purpose, that is, it must be relevant to something other than a propensity theory. *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). Second, “the evidence must be relevant under MRE 402, as enforced though MRE 104(b), to an issue or fact of consequence at trial.” *Id.*

Defendant does not dispute that using the evidence to establish a defendant’s common scheme or plan is a permissible purpose; rather, his contention is that the prosecution failed to adequately demonstrate the logical relevance of the evidence, citing *People v Crawford*, 458 Mich 376, 387; 582 NW2d 785 (1998). See also *Sabin, supra* at 60. This argument must be addressed in tandem with defendant’s argument regarding the similarity or dissimilarity of the acts. “[E]vidence of other instances of sexual misconduct that establish a scheme, plan, or system may be material in the sense that the evidence proves that the charged act was committed.” *Id.* at 62. Thus, “evidence of similar misconduct is logically relevant to show that the charged act occurred where the uncharged misconduct and the charged offense are sufficiently similar to support an inference that they are manifestations of a common plan, scheme, or system.” *Id.* at 63.

Here, contrary to defendant’s argument, the prosecution established that the other acts were sufficiently similar to each other to support an inference that they were part of a common plan or scheme, and thus were relevant to show that the charged act occurred. Each involved one of defendant’s adult female patients who was heavily medicated. Each complainant recalled that defendant touched her breasts and either digitally penetrated her or compelled her to touch his penis. Each incident occurred either in the victim’s bed or in a private room such as a bathroom. All took place within a relatively short time frame. Paraphrasing *Sabin, supra* at 66, one could infer from these common features that defendant had a system that involved taking advantage of the nurse-patient relationship to perpetrate abuse. See also *People v Katt*, \_\_\_ Mich App \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 225632, issued 11/13/01), slip op 13; *People v Pesquera*, 244 Mich App 305, 318-319; 625 NW2d 407 (2001). Concededly, as defendant argues, there were differences between the incidents as well. However, although reasonable minds could differ with regard to whether the charged and uncharged acts contained sufficiently similar features to infer the existence of a common scheme or plan, a trial court’s decision on a close evidentiary decision is not an abuse of discretion. *Katt, supra*, slip op 13.

Defendant next contends that the trial court erred in failing to ascertain the nature of defendant’s defense before admitting the other acts evidence. The contention is without merit. The claim is based on the prosecution’s alternative argument that the other acts evidence was also admissible to rebut the anticipated defense theory that the women’s delusional or suggestible mental state amounted to a fabrication of the alleged offenses. However, the trial court expressly declined to rule on that argument. In light of that ruling, the court had no need to inquire about the defense theories.

We decline to address defendant's final issue, whether the probative value of the other acts evidence was substantially outweighed by the danger of unfair prejudice and the confusing nature of the evidence. The issue is not properly before this Court because it was not raised in defendant's application for leave supporting brief. MCR 7.205(D)(4).

Affirmed.

/s/ David H. Sawyer  
/s/ Peter D. O'Connell  
/s/ Brian K. Zahra