

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM ANTHONY ANDERSON,

Defendant-Appellant.

UNPUBLISHED

March 18, 2004

No. 245729

Ingham Circuit Court

LC No. 01-077146-FH

Before: Jansen, P.J., and Markey and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of one count of pandering, MCL 750.455. The trial court sentenced him to 36 to 240 months' imprisonment. Defendant now appeals as of right. We affirm.

The charges against defendant stem from defendant's meeting with the victim at a hotel room, encouraging her to become a prostitute, and then driving her to a location at which she could prostitute herself. The victim testified at trial that she and her cousin met with defendant at a motel room and defendant told her that he wanted her to "go and work on the streets," and described the benefits of prostitution. While at the motel, after the victim's cousin left, defendant, in an apparent attempt to assess the victim's street value, had the victim undress and thereafter engaged in sex with her. When the victim's cousin returned with another woman, the group left and began driving in defendant's car. Defendant again asked the victim to try prostitution and the victim's cousin also asked her to try prostitution. Defendant then dropped the three women off on Kalamazoo Street in Lansing. As the victim walked the street with the other two women, she was approached by an individual who paid her \$40 to perform oral sex.

Defendant argues on appeal that he was denied a fair trial by the prosecution's advising the jury that defendant had also been charged with third-degree criminal sexual conduct and the introduction of evidence that defendant had previously pandered. Defendant failed to object to these claims of error at trial. Unpreserved issues of alleged prosecutorial misconduct are reviewed for plain error that affected substantial rights. *People v Rodriguez*, 251 Mich App 10, 32; 650 NW2d 96 (2002). Similarly, with regard to an unpreserved evidentiary issue, a defendant must demonstrate plain error affecting a substantial right. *People v Taylor*, 252 Mich App 519, 523; 652 NW2d 526 (2002). Reversal is warranted only if the error resulted in the conviction of an innocent defendant or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.*

Defendant was originally charged with one count of pandering and one count of third-degree criminal sexual conduct (CSC). On the first day of trial, the trial court read the information to the jury, which charged defendant with pandering and third-degree CSC. After reading the information to the jury, the court stated

The defendant has pled not guilty to those charges. You should clearly understand that the Information I have just read is not evidence against him. An Information is read in every case so that the people, the Defendant, and the jury can know exactly what the charges are. You must not think it is evidence of his guilt simply because he has been charged.

Before giving his opening statement, the prosecutor moved to dismiss the count of third-degree CSC because it occurred in a different venue; however, the prosecutor referred to the dismissed count during his opening statement.

Defendant argues that he was denied a fair trial by the prosecution's error in charging and then dismissing the third-degree CSC count in the jury's presence and then referencing the count during opening statements. However, the jury was already made aware of the count when the court read the Information. The jury was also instructed that the fact that defendant was charged with the crime is not evidence of guilt. Defendant has not shown prejudice by the prosecutor's request in front of the jury to dismiss the charge or the prosecutor's brief reference to the charge during his opening statement. Thus, we find no error.

Defendant also argues that other acts of pandering introduced through witness testimony were inadmissible. The victim's cousin testified at trial that she was a prostitute and that defendant had talked her into prostitution. Another witness also testified that he knew the victim's cousin was a prostitute because she worked for defendant. Defendant argues this evidence of other acts was inadmissible.

Generally, all relevant evidence is admissible. MRE 402; *People v Starr*, 457 Mich 490, 497; 577 NW2d 673 (1998). Evidence is relevant if it has any tendency to make the existence of a fact that is of consequence to the action more probable or less probable than it would be without the evidence. MRE 401; *People v Crawford*, 458 Mich 376, 388; 582 NW2d 785 (1998). However, even if relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. MRE 403. Unfair prejudice exists when there is a tendency that the evidence will be given undue or preemptive weight by the jury, or when it would be inequitable to allow use of the evidence. *People v McGuffey*, 251 Mich App 155, 163; 649 NW2d 801 (2002).

Use of other acts as evidence of character is excluded, except as allowed by MRE 404(b). To be admissible under MRE 404(b), the 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 his propensity to commit the offense. *People v Starr*, *supra* at 496.

Here, the evidence was not offered to establish defendant's character. The evidence was relevant, as it tended to make a fact at issue more or less probable, and defendant has failed to

demonstrate that he was unfairly prejudiced by the evidence. We find no error requiring reversal.

Finally, defendant argues that the trial court erred in failing to direct the verdict in defendant's favor because the evidence presented at trial failed to establish proper venue. According to defendant, the conversations between defendant and the victim began in a motel room in Eaton County and continued during the drive to Lansing in Ingham County, but there was insufficient evidence to prove that the offense occurred in Ingham County.

When ruling on a motion for a directed verdict, the court must consider the evidence presented by the prosecutor up to the time the motion was made in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the charged crime were proven beyond a reasonable doubt. *People v Riley*, 468 Mich 135, 139; 659 NW2d 611 (2003). Circumstantial evidence and the reasonable inferences drawn from the evidence may be sufficient to prove the elements of the crime. *People v Schultz*, 246 Mich App 695, 702; 635 NW2d 491 (2001). When reviewing the trial court's decision, this Court reviews the record de novo to determine whether the evidence, viewed in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crime were proven beyond a reasonable doubt. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001).

The victim testified that she went to a Motel 6 on West Saginaw Street in Eaton County and met defendant. During this encounter at the motel, she had a discussion with defendant about becoming a prostitute, but at that time she was unsure whether she would do it. The victim then drove with her cousin, defendant, and another individual to Kalamazoo Street in Lansing. On the way, her cousin encouraged her to become a prostitute and defendant said she should try it. All the while, the victim was unsure whether to do it; however, the victim testified that it was her conversations with her cousin as well as defendant that convinced her to prostitute herself. While the initial acts of encouragement occurred at the motel in Eaton County, the actual act of prostitution occurred after a drive to Lansing in Ingham County. The jury could infer from the evidence that defendant's words during the drive convinced her to prostitute herself and that some of the acts of encouragement occurred in Ingham County. Viewing the evidence in the light most favorable to the prosecution, the evidence could persuade a rational trier of fact that the essential elements of the crime were proven beyond a reasonable doubt. Thus, the trial court did not err in denying defendant's request for directed verdict.

Affirmed.

/s/ Kathleen Jansen
/s/ Jane E. Markey
/s/ Hilda R. Gage