

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DANIEL JAY WARD,

Defendant-Appellant.

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UNPUBLISHED

May 12, 2005

No. 254101

Oakland Circuit Court

LC No. 2003-191596-FC

Before: Gage, P.J., and Cavanagh and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right his jury convictions on three counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(a) (victim under thirteen years of age), and two counts of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(a) (victim under thirteen years of age). We affirm.

Defendant first argues on appeal that the trial court abused its discretion in admitting “other acts” evidence, under MRE 404(b), consisting of defendant’s criminal sexual conduct against another young girl. We disagree. The trial court’s decision to admit evidence is reviewed for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

In this case, the victim, A.F., testified that when she was about eleven years old defendant, who was married to her mother, came into her room at night and felt her chest and vagina with his hands. On another occasion he began fondling her chest while she was doing her homework and then he put his finger inside her vagina, pulled their pants down, and then put his penis into her vagina. On another occasion, while she was watching television, defendant began fondling her chest and then pulled their pants down and put his penis into her vagina. On another occasion, while she was kneeling down looking for some clothes, defendant attempted to put his penis into her mouth but she backed away and he stopped.

During the trial, the prosecutor was permitted to introduce testimony by another victim of defendant’s sexual conduct, S.S. The testimony included that when S.S. was about five years old defendant, who was living with S.S. and her mother, entered the bathroom where she was alone and put his penis into her mouth. The victim testified that defendant placed his penis in her mouth on a second occasion as well. The testimony was admitted under MRE 404(b) as proper and relevant in that it established a common scheme, plan, or system of committing sexual

assaults on female children of defendant's live-in girlfriends when the opportunity arose. Defendant argues that this testimony was inadmissible as irrelevant and was introduced for the improper purpose of portraying defendant as a "bad person" who acted in conformity with the allegations presented in the other case.

MRE 404(b) prohibits the use of other acts evidence to prove the character of a person but permits the admission of such evidence when it is (1) offered for a proper purpose, (2) relevant to an issue or fact of consequence at trial, and (3) sufficiently probative to outweigh the danger of unfair prejudice, pursuant to MRE 403. *People v Starr*, 457 Mich 490, 496-498; 577 NW2d 673 (1998); *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). Here, the evidence was offered for a proper purpose, i.e., as proof of a "scheme, plan, or system in doing an act" to show that the charged act occurred, contrary to defendant's denial. However, to be logically relevant the uncharged acts must be sufficiently similar so as "to support an inference that they are manifestations of a common plan, scheme, or system." *People v Sabin (After Remand)*, 463 Mich 43, 63; 614 NW2d 888 (2000). We agree with the trial court that the degree of similarity between the uncharged sexual assault and charged sexual assault was sufficient to support the inference that defendant employed a common plan, scheme, or system in committing the charged sexual assault. See *People v Hine*, 467 Mich 242, 251, 253; 650 NW2d 659 (2002). Defendant used his position of authority, as a father figure to the victims, and took advantage of his living arrangements with their mothers and the control he had over the victims when their mothers were not home, to perpetrate sexual assaults against them. Further, the evidence was sufficiently probative to outweigh the danger of unfair prejudice. See *VanderVliet, supra*. The trial court also instructed the jury to consider the evidence only for the proper purpose for which it was admitted thus limiting the danger of unfair prejudice by restricting use of the evidence. See *People v Layher*, 238 Mich App 573, 586; 607 NW2d 91 (1999). In sum, the trial court did not abuse its discretion by admitting this evidence under MRE 404(b).

Next, defendant argues that the victim's testimony should have been excluded because her interviews with authorities regarding these sexual assaults were not recorded therefore he was unable to determine if her testimony was tainted or the product of suggestive interviewing techniques. However, defendant has cited no Michigan authority in support of his claim that investigatory interviews with child sexual abuse victims must be videotaped or audiotaped before such testimony is admissible. See MCL 600.2163. Further, whether the child victim's testimony was improperly influenced impacts on credibility, not competency to testify and defendant makes no claim that the victim was incompetent to testify. See MRE 601; *People v Coddington*, 188 Mich App 584, 597; 470 NW2d 478 (1991). Accordingly, this issue is without merit.

Affirmed.

/s/ Hilda R. Gage  
/s/ Mark J. Cavanagh  
/s/ Richard Allen Griffin