

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE JAMES,

Defendant-Appellant.

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UNPUBLISHED

November 18, 2008

No. 279615

Wayne Circuit Court

LC No. 07-007926-01

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE JAMES,

Defendant-Appellant.

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No. 279616

Wayne Circuit Court

LC No. 07-007925-01

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MAURICE JAMES,

Defendant-Appellant.

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No. 279719

Wayne Circuit Court

LC No. 07-005697-01

Before: Zahra, P.J., and Cavanagh and Meter, JJ.

PER CURIAM.

Defendant was charged with a total of eight offenses in three separate files, which were

consolidated for trial before a jury. In LC No. 07-005697-01, he was convicted of two counts of first-degree criminal sexual conduct, MCL 750.520b(1)(a). In LC No. 07-007925-01, he was convicted of three counts of attempted second-degree CSC, MCL 750.92 and MCL 750.520c(1)(a). In LC No. 07-007926-01, he was convicted of three counts of first-degree CSC. He was sentenced to concurrent prison terms of 15 to 40 years for each first-degree CSC conviction, and 12 to 90 months for each attempted second-degree CSC conviction. He appeals by right. We affirm.

### I. Basic Facts

Defendant, age 25 at the time of trial, was convicted of sexually abusing DJ, age 13 at the time of trial, NJ, age 12 at the time of trial, and ZJ, age ten at the time of trial<sup>1</sup>. The victims are defendant's adopted brothers, all having been adopted by their mother at different times. The charged incidents occurred between January 1, 2004, and December 3, 2005, and all occurred in the family home.

DJ testified that, in all, defendant forced him to "suck his private part" more than ten times when he was between the ages of 10 and 12. DJ testified regarding three particular incidents, indicating that one occurred in the basement, one occurred in the bathroom, and one occurred in the victims' room. DJ testified that "sperm" came out of defendant's "private part" during the incidents. ZJ testified that when he was nine and ten years old, defendant made him "rub his legs and his private part" with his hands and made him touch his "private part" with his tongue. He explained that a white substance came out of defendant's "private part" "sometimes on the ground and sometimes in [his] mouth." The incidents occurred between five and ten times. Most of the incidents occurred in the basement, but ZJ recalled that one incident occurred upstairs and two incidents occurred in the victims' bedroom. Both DJ and ZJ testified that during one particular incident, defendant forced them to alternate performing oral sex on him. NJ testified that when he was eight years old, defendant asked him to "touch" the top portion of his right leg between one and five times, but he declined. On two occasions, NJ observed DJ rub defendant's upper thigh at defendant's request.

Defendant testified and denied the allegations. The defense theory was that the victims fabricated the allegations because they disliked defendant for "whooping" them with a belt. Defendant also maintained that he did not live in the family residence for most of 2005. The defense presented the testimony of defendant's 17-year-old adopted brother, who testified that he never saw defendant do anything improper with the victims and that the victims never claimed that defendant had done anything improper. Defendant's adopted sister testified that she spoke with the victims in 2005, and they only said that they did not like defendant spanking them.

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<sup>1</sup> LC No. 07-005697 relates to charges involving ZJ; LC No. 07-007925 relates to charges involving NJ; and LC No. 07-007926 relates to charges involving DJ.

## II. Joinder

Defendant argues that the trial court erred when it consolidated the three CSC cases. We disagree. The trial court's determination whether offenses are related and whether joinder of the offenses for trial is permissible under MCR 6.120(B) is reviewed de novo. *People v Abraham*, 256 Mich App 265, 271; 662 NW2d 836 (2003). The trial court's ultimate decision to consolidate a case is reviewed for an abuse of discretion. *People v Duranseau*, 221 Mich App 204, 208; 561 NW2d 111 (1997).

MCR 6.120(B) provides:

On . . . the motion of a party . . . the court may join offenses charged in two or more informations or indictments against a single defendant . . . when appropriate to promote fairness to the parties and a fair determination of the defendant's guilt or innocence of each offense.

(1) Joinder is appropriate if the offenses are related. For purposes of this rule, offenses are related if they are based on

(a) the same conduct or transaction, or

(b) a series of connected acts, or

(c) a series of acts constituting parts of a single scheme or plan.

(2) Other relevant factors include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties' readiness for trial.

Joinder of the offenses was appropriate under MCR 6.120(B)(1)(c). The evidence indicated that the acts against the individual victims were "part of a single scheme or plan" by defendant to engage in a sequence of sexual contact with young boys to whom he was related and had access to in the family household. For each case, defendant's defense was that the victims fabricated the allegations because he had whipped them with a belt. The three cases were presented distinctively, and the facts were not complex. While defendant contends that the time frames for the offenses varied, temporal proximity is not required to establish a single scheme or plan under MCR 6.120(B). *People v Tobey*, 401 Mich 141, 152 n 15; 257 NW2d 537 (1977) (joinder is allowed for offenses that are part of a single scheme, even if considerable time passes between them). Finally, defendant has not established prejudice. If each case were tried separately, the evidence concerning each victim would have been admissible at each trial under MCL 768.27a or MRE 404(b). Consequently, joinder of the offenses was appropriate and the trial court did not abuse its discretion.

### III. Jury Instructions

Lastly, defendant argues that he was entitled to a special unanimity instruction and an instruction regarding the time of each alleged offense. However, defense counsel's affirmative approval of the trial court's jury instructions, which included a general unanimity instruction, waived any claim of error. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000); *People v Ortiz*, 249 Mich App 297, 311; 642 NW2d 417 (2001).

Affirmed.

/s/ Brian K. Zahra  
/s/ Mark J. Cavanagh  
/s/ Patrick M. Meter