

Court of Appeals, State of Michigan

ORDER

People of MI v Maurice Aric Moore

Docket No. 338829

LC No. 17-002694-01-FC

Michael J. Talbot
Presiding Judge

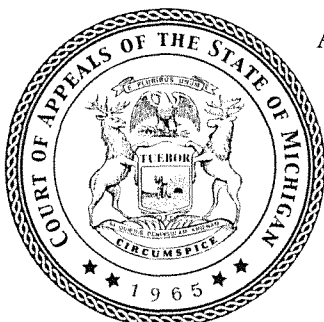
Kirsten Frank Kelly

Thomas C. Cameron
Judges

Pursuant to MCR 7.205(E)(2), the Court orders that the trial court's May 26, 2017 order is REVERSED. The circumstances surrounding the prior allegations of rape make it objectively more probable that defendant acted as the complainant alleges. *People v Mardlin*, 487 Mich 609, 616; 790 NW2d 607 (2010) ("the doctrine of chances . . . is a theory of logical relevance [that] does not depend on a character inference."). In each prior instance, defendant's identity was not at issue, his recourse to violence with each woman was similarly sudden, and his actions always involved successive attempts at more than one sex act. That defendant's prior acts are not identical is inconsequential since those acts need only be "of the same general category," *id.* at 622, rather than "duplicates of the [crimes] for which defendant is now being tried," *id.* at 624. Whether defendant previously raised consent as a defense is likewise of no consequence since "a defense need not be formally set up to create an issue clearly within the facts." *People v VanderVliet*, 444 Mich 52, 78-79; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994) (citation omitted). Finally, it is unlikely the jury would give undue weight to the prior acts given not only their significant probity, but also because a limiting instruction (which jurors are presumed to follow) "would alleviate any danger of unfair prejudice." *People v Roscoe*, 303 Mich App 633, 646; 846 NW2d 402 (2014); MRE 403. MRE 404(b) therefore does not bar admission of these prior acts as the trial court incorrectly ruled.

This order is to have immediate effect. MCR 7.215(F)(2).

This Court retains no further jurisdiction.



A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

AUG 03 2017

Date


Chief Clerk