STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN	UNPUBLISHED July 23, 1996
Plaintiff-Appellee,	
v	No. 184512 LC No. 94-130735-FC
STEVEN R. WILSON,	
Defendant-Appellant.	

Before: Markey, P.J., and McDonald and M.J. Talbot,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree criminal sexual conduct, MCL 750.520b(1)(b); MSA 28.788(2)(1)(b) involving his fifteen-year-old daughter. Defendant was sentenced to five to twenty years' imprisonment. He now appeals as of right. We affirm.

Defendant first argues that the trial court abused its discretion by admitting into evidence testimony regarding defendant's past sexual advances toward his sixteen-year-old sister-in-law because it was improper character evidence. We disagree. The decision to admit evidence will not be reversed on appeal absent an abuse of discretion. See *People v McElhaney*, 215 Mich App 269, 280; 545 NW2d 18 (1996). Character evidence cannot be used to show action in conformity therewith. *People v VanderVliet*, 444 Mich 52, 61; 508 NW2d 114 (1993). Character evidence is admissible, however, provided the following four-part test is met: (1) the evidence is offered for a proper purpose under 404(b); (2) the evidence is relevant under MRE 402 as enforced through MRE 104(b); (3) the probative value of the evidence cannot be substantially outweighed by the danger of unfair prejudice; and (4) the trial court may, upon request, provide a limiting instruction to the jury. *Id*. at 74-75. In the case at bar, the testimony of the witness was admitted for a proper purpose, i.e., to show a common scheme or plan. See *People v Biggs*, 202 Mich App 450, 452-453; 509 NW2d 803 (1983). Because defendant acted in a similar manner toward his minor sister-in-law, it is less probable that defendant acted with innocent intent toward the victim. See *VanderVliet*, *supra* at 79. Evidence of

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* Circuit judge, sitting on the Court of Appeals by assignment.

defendant's action toward the victim is highly probative in light of defendant's denial that he committed the charged conduct. See *id*. at 78. Finally, the trial

court gave a limiting instruction. Given that the four-pronged test of *VanderVliet* has been met, the witness's testimony was properly admitted.

Defendant next argues that he was prejudiced because the trial court permitted the prosecutor to introduce the rebuttal testimony of a witness who was present during trial and heard testimony in a sequestered proceeding. We disagree. The decision whether to exclude a witness who had violated a sequestration order is within the trial judge's discretion. *People v Solak*, 146 Mich App 659, 669; 382 NW2d 495 (1985). A defendant who complains on appeal that a witness violated the lower court's sequestration order must demonstrate that prejudice has resulted. *Id*. Because defendant failed to demonstrate prejudice, the trial court did not abuse its discretion by allowing the testimony of the prosecution's rebuttal witness. Here, the rebuttal witness was married to a prosecution witness (i.e., defendant's sister-in-law) who testified regarding defendant's prior bad acts toward her. The testimony of the rebuttal witness corroborated this particular prosecution witness' testimony. Moreover, defense counsel cross-examined the rebuttal witness and the rebuttal witness indicated that he did not speak to the prosecution witness about the testimony or the trial. Additionally, the rebuttal witness said that he did not speak to anyone about the trial because he was ordered not to do so. Because the rebuttal witness' testimony merely corroborated testimony already on the record together with the fact that the rebuttal witness did not discuss his wife's testimony with her, we find that defendant failed to demonstrate prejudice. Thus, because defendant was required to show prejudice resulting from a violation of the sequestration order and defendant failed to do so, the trial court did not abuse its discretion in allowing the prosecution to call the rebuttal witness.

Next, defendant argues that the trial court's instructions to the deadlocked jury were coercive. We decline to review this issue because defense counsel failed to object to the jury instructions and the issue is not properly before this Court. *People v VanDorsten*, 441 Mich 540, 544-545; 494 NW2d 737 (1993). Moreover, our failure to review this issue will not result in manifest injustice. *Id*.

Defendant further contends that the trial court abused its discretion by admitting the expert testimony of Dr. Sallie Churchill. We decline to review this issue because defense counsel failed to object to the testimony of Dr. Churchill and the issue is not properly before this Court. *People v Grant*, 445 Mich 535, 545; 520 NW2d 123 (1994).

Defendant next argues that he was denied a fair and impartial trial due to several instances of prosecutorial misconduct. Review of an issue of prosecutorial misconduct is done on a case by case basis. *People v Legrone*, 205 Mich App 77, 82; 517 NW2d 270 (1994). This Court examines the pertinent record from the lower court and evaluates the prosecutor's remarks in context to determine whether defendant was denied a fair and impartial trial. *People v Bahoda*, 448 Mich 261, 266-267; 531 NW2d 659 (1995).

Defendant argues that the prosecutor impermissibly referred to religion during cross-examination of a witness. Defendant failed to provide this Court with any authority to support its contention that the

prosecutor made improper references to religion. This Court will not search for authority to sustain a party's argument. *People v Hoffman*, 205 Mich App 1, 17; 518 NW2d 817 (1994). We find that defendant's argument regarding the prosecutor's impermissible references to religion is waived on appeal.

Defendant raises several additional claims of prosecutorial misconduct. Because defense counsel also failed to raise the appropriate objections at trial, our consideration of the remaining instances of alleged prosecutorial misconduct is limited to whether our failure to review would result in a miscarriage of justice. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994). Because any possible prejudice could have been cured by timely instructions from the court, we find no miscarriage of justice. *Id*.

Affirmed.

/s/ Jane E. Markey
/s/ Gary R. McDonald
/s/ Michael J. Talbot