

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DUSTIN ALAN CARLETON,

Defendant-Appellant.

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UNPUBLISHED

June 21, 2005

No. 252555

Oakland Circuit Court

LC No. 03-188990-FH

Before: O’Connell, P.J., and Schuette and Borrello, JJ.

MEMORANDUM.

Defendant was convicted of three counts of third-degree criminal sexual conduct, MCL 750.520d(1)(a). He was sentenced to three concurrent terms of eight and one-half years to fifteen years’ imprisonment. Defendant appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The sole issue on appeal is whether the trial court abused its discretion when it allowed a witness to testify with regard to her prior relationship with defendant pursuant to MRE 404(b). To be admissible under MRE 404(b), bad acts evidence generally 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. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004). The evidence was offered for a proper purpose and was not offered to show that defendant acted in conformity with his “bad” character. Instead, the evidence was offered to show, among other things, defendant’s common scheme or plan and his modus operandi. Both the victim and the witness were fifteen years old at the time they had sexual relationships with defendant, who was twenty years old. Defendant frequently offered the girls marijuana and alcohol prior to the sexual activity. He led each girl to believe that he had feelings for her and that they had a relationship that went beyond mere friendship. The girls lived in the same neighborhood as defendant and were good friends prior to their relationships with defendant. Defendant had a relationship with each girl at the same time and even admitted to the witness that he was trying to see whether he could have sex with each of them in the same time frame.

The witness’ testimony was relevant because defendant’s general denial of guilt placed into issue all the elements of a charged offense. *People v Starr*, 457 Mich 490, 495, 501; 577 NW2d 673 (1998); *People v VanderVliet*, 444 Mich 52, 78; 508 NW2d 114 (1993), mod 445 Mich 1205; 520 NW2d 338 (1994). Additionally, the probative value of the evidence was not

substantially outweighed by its potential for unfair prejudice. While it is true that the jury may have considered the evidence as proof of defendant's bad character, the evidence was not "marginally probative," but was significant with regard to defendant's common scheme or plan, as well as his intent. *People v Ortiz*, 249 Mich App 297, 306; 642 NW2d 417 (2001).

Affirmed.

/s/ Peter D. O'Connell

/s/ Bill Schuette

/s/ Stephen L. Borrello