

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMONT ELLINGTON WELLS,

Defendant-Appellant.

UNPUBLISHED

October 20, 2005

No. 254766

Wayne Circuit Court

LC Nos. 03-002645-01;

03-002646-01

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Before: Fort Hood, P.J., and White and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(b)(i), and three counts of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(b)(i). Defendant was sentenced to 13 ½ to 35 years in prison for the CSC I conviction and 57 months to 15 years in prison for each of the three CSC II convictions. We affirm.

Defendant’s four convictions arose from a consolidated trial of ten alleged offenses against three boys. Two of the boys were teenagers at the time of the offenses and one was a toddler. All three were unrelated to defendant, but each lived in defendant’s home. Defendant took the first teenaged boy, H, into his home when the boy began having difficulty with his family. One of the four CSC II convictions and the only CSC I conviction involved H.<sup>1</sup> Defendant’s other two CSC II convictions involved the second teenager, D, who moved into defendant’s house with his mother and toddler brother. According to the mother, defendant provided her with alcohol and crack cocaine. The jury was unable to reach verdicts on the remaining five CSC I charges involving H or the CSC II charge involving the toddler.

Defendant argues on appeal that his trials were improperly consolidated and that he was denied his right to effectively confront H because confidential juvenile records concerning H’s mental competency were not admitted at trial or at H’s competency hearing. We disagree. We review de novo a trial court’s legal determination whether the offenses were related and therefore whether joinder of the offenses for trial was proper under MCR 6.120(B). *People v Abraham*,

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<sup>1</sup> The teenaged victims will be referred to as “H” and “D” in order to preserve their anonymity.

256 Mich App 265, 271; 662 NW2d 836 (2003). If the offenses are eligible for joinder, we review a trial court's decision regarding discretionary joinder under MCR 6.120(C) for an abuse of discretion. *People v Duranseau*, 221 Mich App 204, 208; 561 NW2d 111 (1997).

Two or more informations against a single defendant may be consolidated for a single trial. MCR 6.120(A). Nonetheless, upon a defendant's motion, he has the right to have unrelated offenses severed for separate trials. MCR 6.120(B). Offenses are related only if "they are based on (1) the same conduct, or (2) a series of connected acts or acts constituting part of a single scheme or plan." MCR 6.120(B).

Here, the trial court properly found the offenses against all three boys were related as acts constituting part of a single scheme or plan. Defendant planned to sexually abuse the boys by inviting them to stay at his house and by establishing secrecy about what took place in the house once the boys were there to avoid detection and perpetuate the abuse. Testimony established that defendant made statements like: "what goes on in [his] house is [his] business"; "It's all about keeping it in the family"; and he "was going to start his own club and . . . [they're] going to tell nobody." Defendant was not previously connected to any of the victims, and defendant supported them all financially once they moved in with him. This suggests a plan to take desperate boys into his home to sexually abuse them, imbuing them with a sense of family and comradery, keeping them quiet, and perpetuating the abuse. Under the circumstances, the prosecution demonstrated that the crimes were related.

The trial court did not abuse its discretion in joining the charges for trial over defendant's objection. Before a court may discretionarily join related charges for trial, the court should consider "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." MCR 6.120(C). Two trials in this case would essentially require each witness to provide identical testimony twice. The concise and efficient presentation of this evidence and the parties' legal theories far outweigh any minor prejudice caused by the number of charges contained in the common trial, and the trial court did not abuse its discretion when it held accordingly. *Duranseau, supra*.

Second, defendant claims the trial court erred when it failed to admit confidential juvenile court records concerning H's mental competency and the accompanying testimony of a psychologist who had evaluated H. A juvenile's confidential psychological records may be obtained if a legitimate interest is shown. MCR 3.925(D)(2). Generally, confidential statements made to a psychologist may also be obtained and admitted when they are crucial to cross-examination. *People v Adamski*, 198 Mich App 133, 139-140; 497 NW2d 546 (1993). Nevertheless, whether to allow the use of a particular confidential statement or other evidence for impeachment is a separate question that is within the trial court's discretion. *Id.* at 140. Here, the process for obtaining the files pursuant to MCR 3.925(D) was not followed, and defendant did not make any proper attempt to obtain access to the files after their initial suppression. Defendant does not make any specific argument regarding what the confidential records would have revealed at trial, nor does he allege that the records included a previous statement by H that the offenses against him did not occur. See, e.g., *Adamski, supra* at 136. Therefore, defendant fails to explain how exclusion of the improperly obtained files hampered his ability to uncover crucial events during cross-examination.

Regarding the competency hearing, the trial court clearly reviewed H's juvenile records even though it did not explicitly rely on them. After questioning H, the court was nonetheless convinced that H was competent to testify truthfully and understandably. Therefore, defendant's claims regarding the competency hearing lack any discernible legal basis.

In defendant's in pro per brief, he raises two additional issues. He first argues that his trial counsel provided him with ineffective assistance of counsel because of counsel's failure to prepare properly for trial and call expert witnesses. We disagree. Because defendant did not raise the issue in the trial court or seek a *Ginther*<sup>2</sup> hearing, we limit our review of defendant's claims to mistakes apparent on the record. *People v Riley (After Remand)*, 468 Mich 135, 139; 659 NW2d 611 (2003). "Decisions regarding what evidence to present and whether to call or question witnesses are presumed to be matters of trial strategy." *People v Rockey*, 237 Mich App 74, 76; 601 NW2d 887 (1999).

As with H's records, defendant fails to support his claim that the additional preparation or expert testimony would actually yield admissible evidence bearing on defendant's innocence. Rather, the alleged failures of counsel all relate to impeachment evidence against H. For example, defendant claims that his trial counsel should have obtained footprint evidence gathered after defendant's house was ransacked. Defendant argues that a comparison between the evidence and H's shoe would demonstrate that H ransacked the house. This evidence was only peripherally relevant to H's credibility and was not germane to any other issue at trial. Moreover, defendant failed to make a record regarding this evidence, so he fails to demonstrate that the comparison would even produce a favorable result. Defendant also failed to make these showings regarding the cellular phone records. Ironically, defendant also contends that his counsel failed to interview the police officer that investigated the ransacking of defendant's house, which led the attorney to elicit testimony that contradicted defendant's theory of an "inside job." Defendant argues that proper preparation would have demonstrated that the officer would not produce favorable testimony, and counsel would not have called him. Because defendant only speculates that counsel's actions resulted from a failure to prepare rather than trial strategy, we will not reverse on this basis. *Riley, supra* at 140. Likewise, defendant's arguments regarding "expert" testimony all relate to H's mental state and the credibility of other witnesses, and defendant fails to name a single witness that would have produced exculpatory evidence but was negligently overlooked by trial counsel.

Regarding defendant's challenge that the boys were not members of his household, we find the jury instructions and evidence adequate to support his conviction for the aggravated offense. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748, amended 441 Mich 1201 (1992).

Affirmed.

/s/ Karen M. Fort Hood

/s/ Helene N. White

/s/ Peter D. O'Connell

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<sup>2</sup> *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).