

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

FRANKLIN DEWIEGHT WOODS,

Defendant-Appellant.

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UNPUBLISHED

January 12, 2006

No. 256750

Washtenaw Circuit Court

LC No. 03-001304 – FC

Before: Bandstra, P.J., and Fitzgerald and White, JJ.

PER CURIAM.

A jury convicted defendant of three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(c), one count of second-degree criminal sexual conduct, MCL 750.520c(1)(c), and one count of first-degree home invasion, MCL 750.110a(2). He was sentenced as an habitual offender, fourth offense, MCL 769.12, to life imprisonment for each of the first-degree CSC convictions and to 60 to 90 years for the second-degree CSC conviction and the home invasion conviction. Defendant appeals as of right. We affirm.

The trial court granted the prosecutor’s pretrial motion to introduce evidence of a 1979 sexual assault to which defendant had pleaded guilty, finding that the similarities between that assault and the assault in the present case established a modus operandi. Defendant argues that the prejudice arising from the introduction of evidence relating to the 1979 assault was too great and denied him a fair trial. We disagree.

This Court reviews a trial court’s admission of other acts evidence for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). Other acts evidence may not be admitted if the probative value of the other act is substantially outweighed by the danger of unfair prejudice. *People v Ho*, 231 Mich App 178, 186; 585 NW2d 357 (1998). All evidence is prejudicial, *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995), mod 450 Mich 1212; 539 NW2d 504 (1995), but “unfair prejudice refers to the tendency of the proposed evidence to adversely affect the objecting party’s position by injecting considerations extraneous to the merits of the lawsuit, e.g., the jury’s bias, sympathy, anger, or shock.” *People v Fisher*, 449 Mich 441, 452; 537 NW2d 577 (1995), quoting *People v Goree*, 132 Mich App 693, 702-703; 349 NW2d 220 (1984).

Although the introduction of evidence relating to the 1979 assault was prejudicial to defendant, it was not unfairly prejudicial and did not deny defendant a fair trial. While the

prosecutor included evidence of the 1979 assault in his opening and closing statements, he reminded the jurors that the proper use of the evidence was to determine if the 1979 assault created a common plan or scheme that would help them identify defendant as the perpetrator. In addition, the prosecutor presented the jurors with other substantial evidence of defendant's guilt, including DNA evidence found on the victim's leg that matched defendant's DNA and the victim's description of the tattoos on her assaulter that matched the tattoos on defendant's body. Furthermore, the trial court instructed the jury that they could use evidence of the 1979 assault only for the specific purpose of determining whether defendant used a plan or scheme that defendant had previously used and that they could not use the evidence to determine that defendant is a bad person or is likely to commit other crimes.

Affirmed.

/s/ Richard A. Bandstra  
/s/ E. Thomas Fitzgerald  
/s/ Helene N. White