

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND GRIGGS,

Defendant-Appellant.

UNPUBLISHED

January 17, 2003

No. 232668

Wayne Circuit Court

LC No. 99-011817

Before: Jansen, P.J., and Hoekstra and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted as charged of five counts of first-degree criminal-sexual conduct, MCL 750.520b(1)(a), and sentenced to concurrent terms of 81 months' imprisonment to 135 months' imprisonment on each conviction. Defendant's convictions arise from sexually assaulting his niece on five occasions beginning when she six years old. He now appeals as of right. We affirm in part and reverse in part.

On appeal, defendant first claims that he was deprived of the effective assistance of counsel when his trial counsel failed to object to the six-day delay in his arraignment on the charges. To show ineffective assistance of counsel under the Sixth Amendment to the United States Constitution and Section 20, Article 1 of the Michigan Constitution, a defendant must establish that counsel's performance fell below an objective standard of reasonableness and that counsel's deficient performance prejudiced him. *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994). A defendant is prejudiced when "there is a reasonable probability that, absent the errors, the fact finder would have had a reasonable doubt respecting guilt." *Strickland, supra*, 466 US at 695.

In this case, even assuming for the sake of argument that trial counsel erred in failing to object to the alleged delay in his arraignment, defendant cannot show that he was prejudiced by trial counsel's presumed error. The record indicates that the victim's mother took the victim to Children's Hospital on November 5, 1999. On the following day, defendant was detained by the police and placed in custody in the Wayne County Jail. A warrant for defendant's arrest was then issued on November 8, 1999; he was arraigned on November 12, 1999. Although defendant claims that his arrest and detention on November 6, 1999 were illegal because a warrant for his arrest was not issued until November 8, 1999 and that he was not arraigned before a magistrate until November 12, 1999, he cannot show that he was prejudiced by the alleged delay in the arraignment. Specifically, even assuming that there was an unreasonable delay in his

arraignment, defendant has failed to show that the alleged delay resulted in an involuntary confession that was subject to a suppression motion. See *Riverside v McLaughlin*, 500 US 44; 111 S Ct 1661; 114 L Ed 2d 49 (1991); *People v Cipriano*, 431 Mich 315; 429 NW2d 781 (1988); *People v Manning*, 243 Mich App 615; 624 NW2d 746 (2000).

Defendant next contends that the trial court abused its discretion in admitting other acts evidence under MRE 404(b). Before trial, the prosecutor moved to introduce evidence of defendant's prior acts of sexually assaulting other children to show "his plan, his preparation, his scheme." According to the prosecutor, "[h]e has a relationship with their mothers, either through marriage or whatever the relationship is, and he sexually assaults them." The trial court ruled that the evidence was admissible under MRE 404(b) because it "does fall within the exceptions of preparation, scheme, plan or system of doing an act."

In this case, the victim, who was ten years old at the time of trial, testified that defendant, her uncle, began to molest her when she was six years old. The first act of sexual assault occurred when defendant was babysitting her. The victim did not tell anyone because defendant told her something bad would happen to her if she did. Over the course of several years, defendant continued to assault the victim, always when he was alone with her. At trial, Natasha Cunningham, who was eighteen at the time of trial, testified that defendant was a close friend of her family and had sexually assaulted her. In addition, Lisa Hardy, the victim's aunt, testified that defendant, her brother-in law, had molested her when she was ten years old after her sister left for work. Here, we cannot say that the trial court abused its discretion in admitting the other acts testimony under MRE 404(b). See *People v Sabin (After Remand)*, 463 Mich 43, 59-60; 614 NW2d 888 (2000) (upholding the admissibility of evidence regarding the defendant's abuse of the victim's half-sister as showing the defendant's scheme, plan or system); *People v Starr*, 457 Mich 490; 577 NW2d 673 (1998) (holding that testimony about defendant's sexual abuse of his half-sister was properly admitted).

Finally, defendant contends that he was denied the due process of law because he was convicted of five counts of CSC-I in Wayne Circuit Court, although the prosecutor proved that two of the counts were committed in Macomb County, not in Wayne County. In effect, defendant is asserting that the trial court should have sua sponte dismissed two of the counts because they were not committed in Wayne County and that the prosecutor committed error in failing to request the dismissal of these two counts.

Because this issue is not preserved, our review is for plain error affecting defendant's substantial rights. See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Reversal is warranted only when plain error results in the conviction of an actually innocent defendant or seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.* at 763.

In this case, the record indicates that defendant was charged with five counts of CSC-I occurring within the City of Detroit. At trial, the trial court instructed the jury that the evidence must establish beyond a reasonable doubt that "the alleged crimes occurred on or about October of 1996 through October 2, 1999, within Wayne County, the City of Detroit." However, the victim's testimony indicated that one sexual assault (Count III) occurred in the City of Mt. Clemens in Macomb County when she was seven years old. The victim also testified that another assault (Count IV) happened when she was eight years old in defendant's van en route to

Mr. Clemens after leaving her grandmother's house in the City of Detroit. Here, it appears that the trial court committed plain error in allowing Count III to go to the jury because venue was clearly not proper in Wayne Circuit County with respect to this charge. However, we cannot find plain error regarding venue in Wayne Circuit Court as to Count IV because it is not clear from the record whether the assault occurred in Wayne County or Macomb County. In any event, reversal of defendant's conviction for Count III is warranted because the plain error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *Id.* at 763. We therefore reverse only as to defendant's conviction for Count III.

Affirmed in part and reversed in part.

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra

/s/ Hilda R. Gage