

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JASON ALLEN LORENTZEN,

Defendant-Appellant.

UNPUBLISHED

March 6, 2003

No. 234312

Saginaw Circuit Court

LC No. 99-018099-FH

Before: Donofrio, P.J., and Saad and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of seven counts of third-degree criminal sexual conduct (“CSC III”), MCL 750.520d(1)(a), four counts of fourth-degree criminal sexual conduct (“CSC IV”), MCL 750.520e(1)(a), five counts of disseminating sexually explicit material to a minor, MCL 722.675, and one count of furnishing alcohol to a minor, MCL 436.1701(1). The trial court sentenced defendant to concurrent terms of ten to fifteen years’ imprisonment for each CSC III conviction and 365 days’ imprisonment for each CSC IV conviction. In addition, the court fined defendant \$1,000 for each other conviction. Defendant appeals as of right. We affirm.

Defendant contends that the trial court erred in denying his motion to quash the information. We review de novo a circuit court’s ruling on a motion to quash. *People v Libbett*, 251 Mich App 353, 357; 650 NW2d 407 (2002), quoting *People v Jenkins*, 244 Mich App 1, 14; 624 NW2d 457 (2000). However, an “erroneous conclusion that sufficient evidence was presented at the preliminary examination is rendered harmless by the presentation at trial of sufficient evidence to convict.” *Libbett, supra* at 14. Here, defendant does not challenge the sufficiency of the evidence supporting any of his convictions. Moreover, our review of the evidence reveals that sufficient evidence was presented to support each of those convictions. Accordingly, any possible error in the evidence introduced at the preliminary examination was rendered harmless. *Id.*

Next, defendant challenges several of the trial court’s evidentiary rulings. Generally, we review a trial court’s evidentiary decisions for an abuse of discretion. *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000). An abuse of discretion will be found only where “an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made.” *Id.*

First, defendant contends that the trial court erred in ruling that he could not present one of the victim's school records. The trial court ruled that the evidence was irrelevant. We agree. Although defendant contends that the records were needed "to explore the reasons why she changed so many schools in a relatively short period of time," defendant does not explain how changing schools related to her credibility. Accordingly, the trial court's ruling was not an abuse of discretion. *Snider, supra* at 122.

Second, defendant contends that the trial court erred in excluding automobile accident records purportedly showing that one of the victims was both under the influence of alcohol and engaging in a sexual act with one of the drivers. We note that the rape-shield statute, MCL 750.520j(1), precludes the admission of evidence of specific instances of a victim's sexual conduct. Neither of the two statutory exceptions apply to the victim's alleged conduct. MCL 750.520j(1); see also MRE 404(a)(3). Accordingly, the trial court did not abuse its discretion in disallowing the evidence.¹ *Snider, supra* at 122.

Third, defendant challenges the trial court's exclusion of portions of the same victim's diary. Apparently, the victim had been confined to a mental hospital for four weeks when she was twelve years old. Defendant contended that her diary contained contradictory statements stating that the cause of her mental illness was both her stepfather's physical abuse of her and the fact that she was sexually active with a teenage boy. The defense contends that the passages suggest that she had falsely accused her stepfather of physical abuse. However, we note that the trial court actually ruled that "[t]here are some matters that the Court believes may be used in the diary, depending on what the witness may testify to on the witness stand in terms of testing her credibility." Accordingly, it is not clear that the trial court necessarily excluded the evidence. Moreover, to the extent that the evidence referenced the victim's sexual activity, it was inadmissible pursuant to MCL 750.520j(1).² Further, we are not persuaded that excluding the diary entries prevented defendant from challenging the victim's credibility. Consequently, the trial court did not abuse its discretion in excluding the evidence. *Snider, supra* at 122.

Defendant's last evidentiary challenge concerns the trial court's refusal to exclude evidence indicating that he had been employed as a police officer. Defendant's status was probative to the extent that at least one of the witnesses testified that he felt more comfortable consuming alcohol at defendant's house because of that status. Therefore, we believe that the evidence was relevant, MRE 401. Moreover, we are not prepared to say that defendant's status as a police officer was prejudicial; indeed, it is possible that some of the jurors were less inclined to believe that defendant engaged in this activity because he was a police officer. See MRE 403. Accordingly, the trial court did not abuse its discretion in allowing the evidence. *Snider, supra* at 122.

¹ Moreover, we note that the trial court expressed a willingness to allow the evidence of drinking as impeachment if that witness denied ever drinking as a minor, but no such denial ensued and so the issue never arose.

² We further find the instant matter to be factually distinguishable from *Lewis v Wilkinson*, 307 F3d 413 (CA 6, 2002).

Finally, defendant contends that his minimum sentences should have been governed by the legislative guidelines, MCL 769.34. Here, the crimes were committed before the legislative guidelines took effect. Accordingly, the trial court properly applied the judicial guidelines. *People v Reynolds*, 240 Mich App 250, 253-254; 611 NW2d 316 (2000). Consequently, we find no error.

Affirmed.

/s/ Pat M. Donofrio
/s/ Henry William Saad
/s/ Donald S. Owens