

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS MERVYN SARGENT,

Defendant-Appellant.

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UNPUBLISHED

January 25, 2007

No. 263392

Allegan Circuit Court

LC No. 04-013744-FC

Before: Sawyer, P.J., and Neff and White, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree criminal sexual conduct (CSC-I), MCL 750.520b, and second-degree criminal sexual conduct (CSC-II), MCL 750.520c. He was sentenced to 180 months to 44 years' imprisonment for the CSC-I conviction, and to 71 months to 15 years' imprisonment for the CSC-II conviction. We affirm.

At trial, the 15-year-old victim testified that, when she was 13 years old, she helped defendant deliver newspapers. He paid her and bought her pictures and clothing for helping him. She testified that, while they were in his truck delivering newspapers, defendant grabbed her buttocks a couple of times. He also drove the victim to his house, where he showed her pornographic pictures on his computer. On one occasion, he told her to take off her clothes, which she did. He then penetrated her vagina with his finger and put his mouth on her breasts.

The victim's sister testified that she helped defendant deliver newspapers when she was 15 years old. He paid her and bought her pictures and clothing for helping him. He showed her pornographic pictures on his computer and, in the computer room at his house, touched her breasts and genitals over and under her clothing. Another girl testified that she helped defendant deliver newspapers when she was 18 years old. Defendant did not touch her or show her any pornographic pictures. However, he gave her a penis-shaped pacifier as a gift and commented that she should wear tighter fitting, more "girly" clothing.

Defendant first contends that the trial court erred in granting the prosecution's motion to admit other acts evidence under MRE 404(b). We review a trial court's decision on the admissibility of other acts evidence for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). Evidence of other acts may be admitted under MRE 404(b)(1) if (1) the evidence is offered for a proper purpose, (2) the evidence is relevant, and (3) the probative value of the evidence is not substantially outweighed by its potential for unfair

prejudice. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993). In this case, the prosecution offered the evidence to establish that defendant had a common plan of using his employer-employee relationship to isolate and victimize young girls, and the charged offenses were part of that plan. Thus, the evidence was offered for a proper purpose. MRE 404(b)(1); *Crawford, supra* at 390.

Further, the evidence was relevant. “[E]vidence of similar misconduct is logically relevant to show that the charged act occurred where the uncharged misconduct and the charged offense are sufficiently similar to support an inference that they are manifestations of a common plan, scheme, or system.” *People v Sabin (After Remand)*, 463 Mich 43, 63; 614 NW2d 888 (2000). The charged and uncharged acts in this case contained common features beyond mere commission of acts of sexual abuse. The evidence established that defendant employed young girls of similar age to help him deliver newspapers. He isolated and victimized the girls in his truck while delivering newspapers, and at his house. In the computer room of his house, he showed the girls pornographic pictures and touched the girls on intimate parts of their bodies. He paid the girls money and purchased gifts and clothing for them, including underwear. One could infer from these common features that defendant had a system that involved taking advantage of the employer-employee relationship to sexually abuse the girls. Further, we reject defendant’s argument that the probative value of the other acts evidence was substantially outweighed by its potential for unfair prejudice. MRE 403. We do not agree that the jury likely convicted defendant based on an assessment that he had committed these other bad acts and therefore was a bad man. Nor do we agree that the trial court’s limiting instruction to the jury was ineffective in confining the jury’s consideration of the evidence to the relevant issue.

Defendant next contends that the prosecution failed to present sufficient evidence to support his convictions. In reviewing a challenge to the sufficiency of the evidence, we must determine whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could conclude the prosecution proved all the essential elements of the crime beyond a reasonable doubt. *People v Hicks*, 259 Mich App 518, 522; 675 NW2d 599 (2003). “ ‘Circumstantial evidence and reasonable inferences arising from that evidence can constitute satisfactory proof of the elements of a crime.’ ” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000), quoting *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). Defendant asserts that “In a case of this magnitude, a simple ‘he said/he[sic]said,’ without any additional evidence or testimony, should not satisfy the burden of proof required to convict someone in our judicial system. Especially in a case where the victim’s allegations were shaky at best, including lacking dates for the alleged acts, and without any supporting physical, medical or eyewitness testimony.”

Contrary to defendant’s argument, the prosecutor was not required to present any physical, medical or eyewitness testimony to corroborate the victim’s testimony because “[a] complainant’s eyewitness testimony, if believed by the trier of fact, is sufficient evidence to convict.” *People v Newby*, 66 Mich App 400, 405; 239 NW2d 387 (1976). Nor are we persuaded that the victim’s testimony was inherently deficient or incredible. The victim’s testimony was sufficient to establish all the elements of the offenses of which defendant was convicted.

Defendant next contends that his trial counsel was ineffective for failing to subpoena a character witness to testify at trial and for failing to schedule a polygraph examination after the

trial court approved the administration of the test. In *People v Knapp*, 244 Mich App 361, 385-386; 624 NW2d 227 (2001), this Court set forth the rules governing claims of ineffective assistance of counsel:

To establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that, but for defense counsel's errors, there was a reasonable probability that the result of the proceeding would have been different. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). A defendant must affirmatively demonstrate that counsel's performance was objectively unreasonable and so prejudicial as to deprive him of a fair trial. *People v Pickens*, 446 Mich 298, 303; 521 NW2d 797 (1994). The defendant must also overcome the presumption that the challenged action might be considered sound trial strategy. *People v Tommolino*, 187 Mich App 14, 17; 466 NW2 315 (1991), citing *Strickland v Washington*, 466 US 668; 104 S Ct 2052; 80 L Ed 2d 674 (1984).

Defendant argues that his trial attorney was ineffective for failing to subpoena Thomas James to testify at trial regarding defendant's good character. According to defendant, James would have testified that he left his children in defendant's care and that, when his children were with defendant, they were safe. Assuming that James would have so testified, the evidence is not so substantial that it would have changed the outcome of the trial.

Defendant also argues that his trial attorney was ineffective for failing to schedule a polygraph examination after the court approved the administration of the test. A defendant who allegedly has committed criminal sexual conduct has an absolute right to receive a polygraph examination or lie detector test if the defendant requests it. MCL 776.21(5). The right to the examination "is lost only when the presumption of innocence has been displaced by a finding of guilt, i.e., when an accused is no longer 'alleged' to have committed the offense." *People v Phillips*, 469 Mich 390, 396; 666 NW2d 657 (2003). However, nothing in the lower court record indicates when or if defendant requested the polygraph examination. Further, assuming that defendant had requested such a test, we will not assume that counsel was ineffective, rather than that he was acting pursuant to a reasonable assessment that defendant would harm his defense by taking the test. Further, had defendant passed the test, that fact would not have been admissible, *id.* at 397, and defendant has not shown that the outcome would have been affected.

Defendant next contends that the district court erred in denying his motion to substitute retained counsel for his court-appointed attorney. "To avoid forfeiture of a constitutional claim, the defendant must show that an error occurred, it was plain, and it affected the outcome of the lower court proceedings." *People v McAllister (On Remand)*, 249 Mich App 34, 35; 641 NW2d 268 (2001). Defendant forfeited this claim because he failed to demonstrate that any error occurred. The lower court record does not support the factual basis for defendant's claim. Nothing in the record indicates that defendant moved to substitute retained counsel for his court-appointed attorney or that he attempted to waive his right to court-appointed counsel at any time.

Finally, defendant contends that he was sentenced in violation of *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). Because this issue is unpreserved, we review the issue for plain error affecting substantial rights. *Carines, supra* at 763-764. In

*People v Drohan*, 475 Mich 140, 164; 715 NW2d 778 (2006), quoting *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004), our Supreme Court definitively held that “the Michigan [indeterminate sentencing] system is unaffected by the holding in *Blakely* . . . .” Therefore, defendant failed to demonstrate plain error affecting his substantial rights, *Carines*, *supra*, and is not entitled to relief on this issue. Further, the evidence in this case adequately supports that trial court’s scoring of the challenged offense variables, and defendant’s sentence was within the appropriate guidelines. Therefore, we must affirm the sentence. *People v Cox*, 268 Mich App 440, 453-455; 709 NW2d 152 (2005).

Affirmed.

/s/ David H. Sawyer  
/s/ Janet T. Neff  
/s/ Helene N. White