

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GLEN DENNIS CHAPMAN,

Defendant-Appellant.

UNPUBLISHED

April 24, 2003

No. 232993

Jackson Circuit Court

LC No. 00-002295-FH

Before: Talbot, P.J., and Sawyer and O'Connell, JJ.

PER CURIAM.

Defendant was convicted of one count of third-degree criminal sexual conduct, MCL 750.520d(1)(a), after engaging in a long-term sexual affair with a young woman from his church. He appeals as of right. We affirm.

Defendant, the youth minister of the Greater Bible Way Temple in Jackson, Michigan, met the victim at church when she was fourteen years old. The victim testified that, after they met, defendant began commenting about her body and her appearance, which made the victim uncomfortable. She never had a boyfriend and was not experienced with flirtatious or sexually assertive men. However, her parents liked defendant and trusted him. Defendant was a leader and everyone looked up to him.

The victim testified that, shortly before her fifteenth birthday, defendant drove her from a festival in Lansing to his home in Holt. When they arrived, neither defendant's wife nor child were there, and defendant began kissing the victim. He asked if she was a virgin. She indicated that she was. Defendant told her that he would "go slow." The victim testified that it was difficult to refuse defendant because he was her minister and was older. Defendant engaged in an act of sexual intercourse with the victim. He made her promise not to tell anyone. Thereafter, the victim and defendant engaged in an ongoing sexual relationship, which lasted several years. They had sexual relations in the church van and in different hotels. The victim believed she was in love with defendant and found it hard to resist his sexual advances. The victim testified that she recalled one specific instance of sexual penetration, which occurred in Jackson County when she was fifteen years old and in the ninth grade. Defendant picked her up from school in the church van and took her to Ella Sharp Park. They had sexual intercourse in the back of the van. A police officer approached the vehicle while the victim was dressing.

Eventually, Monica Stephens, another church member, exposed the relationship to the church's pastor and other church leaders in a meeting. Defendant and the victim were both present at the meeting. The issue of statutory rape was raised after it was mentioned that the relationship had been ongoing for six years and the victim was only nineteen years of age. One person who attended the meeting heard defendant refute that the victim was thirteen years old when the relationship began. No one else heard this statement, and defendant did not make any other statements about the victim's age at the meeting. There was evidence, however, that defendant cried and apologized for the relationship.

Although the issue of criminal sexual conduct was raised in April 1999, law enforcement was not contacted about the matter until September 1999. The victim testified that she went to the police only after learning that there was another young woman in a similar situation. The church's pastor indicated that he did not immediately contact the police because he made a commitment to investigate the matter first. Defendant testified, however, that the police were notified only after he had an altercation with the church's pastor over a loan payment in September 1999. Defendant indicated that, after the April meeting, he was stripped of most of his church duties, but he remained involved in the church. Further, his relationships with leaders of the church were not affected, and he continued to operate his barbershop on church premises. It was only after the confrontation about the missed loan payment that defendant was excommunicated from the church and brought to the attention of the police. Defendant testified that, before the police were contacted, the pastor told him that he planned "to unleash some things" that he had "been holding back." Defendant further testified that, around the same time, the victim telephoned him and told him that the pastor was trying to convince her to press charges against defendant. Defendant maintained that he did not begin his sexual relationship with the victim until she was sixteen years old, and that the sexual encounter at Ella Sharp Park occurred when the victim was in the eleventh grade. The victim was seventeen years old when she was in the eleventh grade.

Other evidence produced at trial did not strongly support that defendant had sexual relations with the victim when she was under the age of sixteen. A medical record indicated that the victim obtained birth control several months after her sixteenth birthday. The lease for the church barbershop, which the victim indicated was the site of physical touching, was not effective until December 1, 1996, at which time the victim was seventeen years old. Further, a Motel 6 receipt, dated in 1995, did not indicate that the victim was with defendant at that motel. Defendant lived in Holt and attended church functions in Jackson. It was undisputed that he spent many nights in hotels in Jackson. Moreover, while there was evidence that the victim's academic grades plummeted in the ninth grade, only a tenuous inference could relate that event with the sexual relationship, especially given that the victim's academic failings also coincided with the beginning of her high school years. In addition to the lack of physical evidence, there was evidence that the victim waffled about the prosecution. On one occasion, the victim telephoned a detective from the Jackson Police Department and indicated that she did not want to prosecute. The church's pastor later contacted the detective and informed him otherwise. The victim subsequently refused to meet with a Michigan State Police detective to establish a time line for the case. The detective wrote a letter to the victim, indicating that she did not want to hear from the pastor or from the victim's stepfather, but wanted to talk directly to the victim. The detective expressed that she felt the victim was being pressured into something she did not want to pursue.

The jury convicted defendant as charged.

I

Defendant argues that several instances of prosecutorial misconduct denied him a fair trial. Because the issues were not preserved by timely objections at trial, they are reviewed for plain error.

To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights. The third requirement generally requires a showing of prejudice, i.e., that the error affected the outcome of the lower court proceedings. “It is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice.” Finally, once a defendant satisfies these three requirements, an appellate court must exercise its discretion in deciding whether to reverse. Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error “ ‘seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings’ independent of the defendant’s innocence.” [*People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999), citing *United States v Olano*, 507 US 725, 734, 736-737; 113 S Ct 1770; 123 L Ed 2d 508 (1993) (citations omitted).]

First, defendant argues that the prosecutor improperly explored the issue of his religious beliefs. However, upon review of the record, we are not persuaded that there is clear or obvious error or prejudice of substantial rights. Defendant himself extensively explored the issue of his religious beliefs and background. Indeed, part of defendant’s defense involved an argument that the claims were brought as part of what was essentially internal church politics.

It is axiomatic that prosecutors are prohibited from inquiring about a witness’ religious beliefs. MCL 600.1436; *People v Bouchee*, 400 Mich 253, 264; 253 NW2d 626 (1977); *People v Hall*, 391 Mich 175, 180-183; 215 NW2d 166 (1974); *People v Leshaj*, 249 Mich App 417, 420-421; 641 NW2d 872 (2002). MCL 600.1436 provides that no witness “may be questioned in relation to his opinions on religion, either before or after he is sworn.” In *Bouchee*, *supra* at 262, the defendant broached the subject of religion by volunteering that he intended to tell the truth “so help me God,” and that he attended church and believed in the Bible. During cross-examination, the defendant was questioned by the trial court about whether his claimed beliefs from the Bible were at odds with his testimony that he was willing to have consensual, extramarital sexual relations. *Id.* at 261. Because the question constituted an inquiry into whether the defendant’s religious beliefs permitted or forbade the extramarital relationship, which formed the basis of the charged conduct, the Court deemed the questioning improper under MCL 600.1436. *Id.* at 261-263. The Court recognized that the defendant volunteered testimony about his membership in the church and his belief in the Bible. *Id.* It determined, however, that the defendant’s testimony did not invite or justify the kind of “clarifying inquiry” that was later made. *Id.* The inquiry into the nature and substance of the defendant’s specific beliefs constituted error requiring reversal. *Id.* at 265.

However, a defendant or witness may open himself up to questioning about religion. *People v Vasher*, 449 Mich 494, 500; 537 NW2d 168 (1995); *People v Jones*, 82 Mich App 510, 515; 267 NW2d 433 (1978). In *Jones*, the defendant testified that he was an ordained preacher. *Id.* The prosecutor questioned the defendant about his qualifications for that position. *Id.* Because the prosecutor's questions were limited to the area raised by the defendant and were not directed at the defendant's beliefs or specific religious practices, the cross-examination was proper. *Id.*¹ Similarly, in *People v Umerska*, 94 Mich App 799, 803; 289 NW2d 858 (1980), the defendant testified on direct examination about her specific religious beliefs in witchcraft. On cross-examination, the prosecutor asked a limited number of questions about witchcraft as a religion. *Id.* Under the circumstances, this Court found no error. *Id.* at 806-807. It noted that the defendant's counsel could not have the benefit of the defendant's favorable responses about her religious beliefs without having those beliefs examined by the prosecutor. *Id.* at 808.

In the case at bar, in the absence of an objection, it is simply too speculative to say at what point the prosecutor may have gone too far in addressing the religion issue. Clearly, defendant's status as a youth pastor was an integral part of this case and defendant's defense. While that did not give the prosecutor carte blanche in pursuing issues of religion, it certainly gave the prosecutor some latitude. In the absence of an objection by defendant, we cannot say with any certainty at what point, if at all, the prosecutor went beyond what was consistent with defendant's trial strategy. Indeed, defense counsel's lack of an objection suggests that defense counsel did not believe that the prosecutor's questioning was inconsistent with the defense strategy. Simply put, we see no plain or obvious error that affected defendant's substantial rights.

Defendant also challenges the prosecutor's opening statement, wherein the prosecutor stated that defendant used his position of leadership and influence to make the church his "preyground" for young girls. Defendant does not explain or rationalize his position that this portion of the prosecutor's opening statement was improper. A defendant may not announce his position and leave it to this Court to discover and rationalize the basis for his claims. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998). Further, we find no misconduct requiring reversal. A prosecutor is not required to state his case in the blandest possible terms. See *People v Launsburry*, 217 Mich App 358, 361; 551 NW2d 460 (1996). There was no plain error. *Carines, supra*.

We further find no plain error in the prosecutor's questioning of the victim's mother about her motivations with respect to encouraging or demanding prosecution of the case. Defendant claimed that the victim and her parents were the pastor's pawns, who depended on the pastor and church for their livelihoods. Defendant's theory was that the victim and her parents were pressured by the pastor into proceeding with the prosecution. Although the prosecutor was forbidden from probing into specific religious beliefs to bolster their testimony, the prosecutor was entitled to elicit evidence of their motivations for pursuing prosecution.

¹ This Court nevertheless reversed and remanded the case because the prosecutor questioned other witnesses about specific tenets and practices of the defendant's church and about his religious views on alcohol consumption. *Jones, supra* at 515-518.

II

Defendant next challenges the trial court's admission of other bad-acts evidence pursuant to MRE 404(b). Specifically, he challenges the admission of Brandy Johnson's testimony. We review this preserved evidentiary issue for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). If error is found, reversal is not required unless the defendant meets his burden of establishing that, more probably than not, a miscarriage of justice occurred because of the error. *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999). The necessary inquiry focuses on the type of error and its effect in light of the weight and strength of the untainted evidence. *Id.*

MRE 404(b) provides:

(1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in this case.

MRE 404(b) is a rule of inclusion. *People v Pesquera*, 244 Mich App 305, 317; 625 NW2d 407 (2001). Relevant, other-act evidence does not violate MRE 404(b) unless offered only to show the criminal propensity of an individual to establish that he acted in conformity therewith. *People v Katt*, 248 Mich App 282, 304; 639 NW2d 815 (2002), *lv gtd* in part on other grounds 466 Mich 889 (2002). In *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994), the Court clarified the test to determine the admissibility of other bad-acts evidence:

First, that the evidence be offered for a proper purpose under Rule 404(b); second, that it be relevant under Rule 402 as enforced through Rule 104(b); third, that the probative value of the evidence is not substantially outweighed by unfair prejudice; fourth, that the trial court may, upon request, provide a limiting instruction to the jury.

It is insufficient for the prosecution to merely recite one of the purposes articulated in MRE 404(b). *Crawford, supra* at 387. It must also demonstrate that the evidence is relevant. *Id.* The offered evidence must truly "be probative of something *other* than the defendant's propensity to commit the crime." *Id.* at 390.

The prosecutor articulated a proper purpose for the evidence under MRE 404(b), specifically, that the evidence demonstrated a common plan or scheme. The prosecutor also demonstrated that the similar-acts evidence was logically relevant. The prosecutor's theory was that defendant engaged in a common plan or scheme of using his position as a youth minister to gain access to young girls for the purpose of initiating sexual relationships. The similar-acts evidence supported this theory. The evidence of the charged conduct was sufficiently similar to the evidence of the uncharged conduct to support an inference that they were both manifestations of a common plan, scheme or system. *Katt, supra* at 305, citing *People v Sabin (After Remand)*,

463 Mich 43, 63; 614 NW2d 888 (2000). See also *Pesquera, supra* at 319. The common features included that both Johnson and the victim knew defendant in his capacity as a youth minister, both eventually babysat defendant's children, defendant commented on the appearance and body of both and made them feel uncomfortable, both were virgins who had their first sexual experiences with defendant, both looked up to defendant as a leader, both had difficulty ending their relationships with defendant, and finally, after the first acts of sexual intercourse, defendant told both of the girls not to tell anyone.

We further find that the danger of unfair prejudice did not substantially outweigh the probative value of the other-acts evidence. MRE 403. While all relevant evidence is inherently prejudicial and damaging, only unfairly prejudicial evidence requires exclusion. *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995), modified 450 Mich 1212 (1995). Relevant considerations in determining unfair prejudice include whether the jury will give the evidence undue or pre-emptive weight and whether the use of the evidence is inequitable. *Id.* at 75-76. In this case, the prosecutor did not use the evidence for any impermissible character reasons. He specifically reminded the jury that Johnson's testimony could not be used to conclude that because defendant "did something to" Johnson, he must have committed the crime for which he was charged. Moreover, the trial court cautioned the jury about the use of Johnson's testimony on two separate occasions. There was no danger of unfair prejudice, and the trial court did not abuse its discretion in admitting the similar-acts testimony of Johnson.

Finally, defendant challenges the church pastor's testimony that, before the April 1999 meeting, he received other information that defendant had engaged in sexually inappropriate behavior with an unnamed woman. This issue was not raised before, or considered by, the trial court. While defendant claims that this testimony violated MRE 404(b), he fails to provide any accompanying argument to explain or rationalize why the testimony was inadmissible or violative of MRE 404(b). Where a defendant raises an issue but fails to argue the merits of that issue, the issue is abandoned. *People v Anderson*, 209 Mich App 527, 538; 531 NW2d 780 (1995).

Affirmed.

/s/ Michael J. Talbot
/s/ David H. Sawyer
/s/ Peter D. O'Connell