

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE LAVERN BODRIE,

Defendant-Appellant.

UNPUBLISHED

March 15, 2005

No. 252969

Tuscola Circuit Court

LC No. 02-008497-FC

Before: Wilder, P.J., and Fitzgerald and Kelly, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of one count of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1)(b)(ii) (relation), and eight counts of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(b)(ii) (relation). Defendant was sentenced to concurrent prison terms of ten to thirty years for the CSC I conviction and five to fifteen years for each of the CSC II convictions. We affirm.

On appeal, defendant contends that the trial court erred in admitting evidence of previous sexual contact between defendant and his stepdaughter that occurred in 1995. We disagree.

We review the admission of evidence of prior bad acts for an abuse of discretion. *People v Sabin (After Remand)*, 463 Mich 43, 60; 614 NW2d 888 (2000). MRE 404(b)(1) provides:

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 the case.

To be admissible under MRE 404(b), evidence of prior bad acts must be offered for a proper purpose, must be relevant, and its probative value must not be substantially outweighed by the danger of unfair prejudice. *People v Knox*, 469 Mich 502; 509; 674 NW2d 366 (2004).

The prosecution proffered the challenged evidence to show that both the 1995 incidents and the 2002 incidents were manifestations of a common scheme, plan, or system defendant used to assault his stepdaughter. See *Sabin, supra* at 63. There were several similarities between the 1995 incidents and the 2002 incidents. These include the identity of the alleged victim, the time of day of the contact, the type of contact involved, and the fact that the victim's mother, defendant's wife, was out of the home when the contact occurred. We conclude that these similarities are sufficient to make the evidence admissible to show a common scheme, plan, or system defendant used to assault his stepdaughter.

We reject defendant's argument that the evidence was inadmissible under MRE 404(b) because the evidence showed that, in the 1995 incidents, his stepdaughter touched him inappropriately while he slept not that he touched her. Under this theory of the evidence, the 1995 acts were not prior "wrongs or acts" of defendant. Therefore, they would not be precluded by MRE 404(b), which precludes prior "wrongs or acts" of a person to show conformity therewith.

Even under defendant's theory of the evidence, the 1995 incidents would be relevant. "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. Under the circumstances of this case, the 1995 incidents would be relevant to the determination of whether defendant committed the alleged 2002 sexual assaults. The fact that defendant and the victim had had prior sexual contact, even if initiated solely by the victim, would have a tendency to make the alleged 2002 acts "more or less probable than it would be without the evidence." *Id.*

Affirmed.

/s/ Kurtis T. Wilder
/s/ E. Thomas Fitzgerald
/s/ Kirsten Frank Kelly