

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
December 16, 2014

v

RODNEY BLAKE ROBINSON,
Defendant-Appellant.

No. 318264
Oakland Circuit Court
LC No. 2011-235127-FH

Before: RIORDAN, P.J., and BECKERING and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree criminal sexual conduct, MCL 750.520b(1)(a), and two counts of second-degree criminal sexual conduct, MCL 750.520f. Defendant’s convictions arise from the digital penetration of his fiancée’s 12-year-old niece. Defendant was sentenced to 25 years to 50 years for first-degree criminal sexual conduct and 8 years to 270 months for each count of second-degree criminal sexual conduct. We affirm.

I. OTHER ACTS EVIDENCE

A. STANDARD OF REVIEW

We review evidentiary issues for an abuse of discretion. *People v Benton*, 294 Mich App 191, 199; 817 NW2d 599 (2011). “A trial court abuses its discretion when it chooses an outcome that is outside the range of reasonable and principled outcomes.” *People v Orr*, 275 Mich App 587, 588-589; 739 NW2d 385 (2007). “Whether law of the case applies is a question of law subject to review de novo.” *Ashker ex rel Estate of Ashker v Ford Motor Co*, 245 Mich App 9, 13; 627 NW2d 1 (2001).

B. ANALYSIS

Defendant contends that the admission of other acts evidence pursuant to MCL 768.27a denied him a fair trial. The disputed evidence involves defendant’s second-degree criminal sexual conduct conviction regarding a former girlfriend’s six-year old niece. The trial court initially ruled to exclude this evidence at trial. However, the prosecution sought an interlocutory appeal. A panel of this Court ruled in favor of the prosecution, and the Michigan Supreme Court denied leave to appeal. *People v Robinson*, 493 Mich 882; 821 NW2d 889 (2012). “[I]t is settled that issues previously raised and addressed by this Court in an interlocutory appeal are

binding on us in subsequent appeals, the facts remaining materially the same.” *Int’l Union v State*, 211 Mich App 20, 27, 535 NW2d 210 (1995). Because there has been no material change in facts, the law-of-the-case doctrine applies.

Nevertheless, defendant contends that he is entitled to new trial pursuant to the intervening decision in *People v Watkins* and *People v Pullen*, 491 Mich 450; 818 NW2d 296 (2012). Defendant ostensibly is relying on the intervening caselaw exception to the law-of-the-case doctrine. *People v Olear*, 495 Mich 939; 843 NW2d 480 (2014). In *Watkins/Pullen*, 491 Mich at 486-491, the Michigan Supreme Court clarified that when admitting evidence pursuant to MCL 768.27a, an analysis of MRE 403 must be conducted. This Court’s prior ruling included such an analysis. Thus, the prior opinion is consistent with *Watkins/Pullen*.

Moreover, even if this Court were to revisit this issue, the admission of this evidence was proper. Defendant does not challenge the threshold issue of whether the evidence qualifies under MCL 768.27a. Instead, he contends that the evidence should have been excluded as unfairly prejudicial. Pursuant to MRE 403, “evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]” Here, evidence that defendant previously assaulted a minor was probative of whether he committed the crimes in the instant case because it was relevant to whether he had a propensity to commit criminal sexual conduct crimes against minors. *Watkins/Pullen*, 491 Mich at 487. It also related to whether the minor in this case was providing truthful testimony. As we stated in *People v Mann*, 288 Mich App 114, 118; 792 NW2d 53 (2010), such evidence “tended to show that it was more probable than not that [the minor] in this case [was] telling the truth when [she] indicated that [the defendant] had committed CSC offenses against [her].”

In this case, the significant probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. MRE 403. In *Watkins/Pullen*, the Supreme Court stated that “other-acts evidence admissible under MCL 768.27a may not be excluded under MRE 403 as overly prejudicial merely because it allows a jury to draw a propensity inference.” 491 Mich at 487. The Court identified several factors to consider in a MRE 403 analysis, including: “(1) the dissimilarity between the other acts and the charged crime, (2) the temporal proximity of the other acts to the charged crime, (3) the infrequency of the other acts, (4) the presence of intervening acts, (5) the lack of reliability of the evidence supporting the occurrence of the other acts, and (6) the lack of need for evidence beyond the complainant’s and the defendant’s testimony.” *Id.* at 487-488.

Defendant argues that the two crimes were dissimilar, so the prior act was inadmissible. However, both girls were the niece of a woman defendant was romantically involved with at the time of his acts. Both girls were staying at defendant’s residence overnight and were in his care. Further, the question is not whether the evidence was prejudicial. “Virtually all evidence is prejudicial or it isn’t material.” *Old Chief v United States*, 519 US 172, 193; 117 SCt 644; 136 LEd 2d 574 (1997) (O’CONNOR, J.). Instead, the inquiry is whether the “[e]vidence is *unfairly* prejudicial,” which occurs “when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury.” *People v Mardlin*, 487 Mich 609, 627; 790 NW2d 607 (2010) (emphasis added). The test is “whether the probative value is *substantially* outweighed by the risk of unfair prejudice.” *People v Starr*, 457 Mich 490, 499-500; 577 NW2d 673 (1998) (emphasis in original). Even if the other acts evidence involved testimony of acts

that were “depraved” or of “monstrous repugnance, such characteristics were inherent in the underlying crime of which defendant stood accused in this case. The danger the rule seeks to avoid is that of unfair prejudice, not prejudice that stems only from the abhorrent nature of the crime itself.” *Id.* (quotation marks omitted). The significant probative value of the evidence in this case was not substantially outweighed by the danger of unfair prejudice to defendant. Thus, he is not entitled to a new trial.

II. SUFFICIENCY OF THE EVIDENCE

A. STANDARD OF REVIEW

Defendant contends that there was insufficient evidence to support his convictions. We review *de novo* a challenge to the sufficiency of the evidence. *People v Ericksen*, 288 Mich App 192, 195; 793 NW2d 120 (2010). “In determining whether the prosecutor has presented sufficient evidence to sustain a conviction, an appellate court is required to take the evidence in the light most favorable to the prosecutor” to ascertain “whether a rational trier of fact could find the defendant guilty beyond a reasonable doubt.” *People v Tennyson*, 487 Mich 730, 735; 790 NW2d 354 (2010) (quotation marks and citations omitted). We resolve conflicts of the evidence in favor of the prosecution, “and we will not interfere with the jury’s determinations regarding the weight of the evidence and the credibility of the witnesses.” *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008).

B. ANALYSIS

Defendant merely highlights evidence favorable to him. He further contends that the victim gave incredible testimony. Such arguments ignore our role in a sufficiency challenge. We review the evidence in the light most favorable to the prosecution. *Tennyson*, 487 Mich at 735. Here, the victim testified that defendant touched her buttocks, squeezed her breasts, and inserted his finger in her vagina. This testimony is sufficient to support the jury’s verdict. As the Legislature has specified, “[t]he testimony of a victim need not be corroborated in prosecutions under sections 520b to 520g.” MCL 750.520h. We also resolve conflicts of the evidence and credibility determinations in favor of a jury’s verdict. *Tennyson*, 487 Mich at 735. The evidence was sufficient to support defendant’s convictions.

III. SENTENCE

Defendant asserts that his sentence of 25 years for first-degree criminal sexual conduct constitutes a sentencing departure, which the trial court did not properly support. However, pursuant to MCL 750.520b(2)(b): “For a violation that is committed by an individual 17 years of age or older against an individual less than 13 years of age by imprisonment for life or any term of years, but not less than 25 years.” As this Court recently explained, “the ‘mandatory minimum’ sentence in MCL 750.520b(2)(b) is a flat 25-year term” and only when the trial court imposes an “upward departure from this 25-year mandatory minimum must” the court support its ruling “by substantial and compelling reasons.” *People v Payne*, 304 Mich App 667, 672; 850 NW2d 601 (2014). Thus, “the court could [impose] a flat 25-year minimum without articulating any substantial and compelling reasons.” *Id.* at 673; see also MCL 769.34 (“Imposing a mandatory minimum sentence is not a departure under this section.”). Accordingly, defendant’s argument is without merit.

IV. CONCLUSION

Defendant is not entitled to relief based on the admission of other acts evidence. Further, defendant's convictions were supported with sufficient evidence and his sentence does not constitute a sentencing departure. We affirm.

/s/ Michael J. Riordan

/s/ Jane M. Beckering

/s/ Mark T. Boonstra