

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
Plaintiff-Appellee,

UNPUBLISHED  
September 15, 2015

v

WILLIAM TYRONE SMITH,  
Defendant-Appellant.

No. 322077  
Wayne Circuit Court  
LC No. 12-000193-FC

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Before: MURRAY, P.J., and METER and OWENS, JJ.

PER CURIAM.

Defendant appeals as of right his convictions by a jury of three counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(1), and one count of second-degree criminal sexual conduct (CSC II), MCL 750.520c(1)(e), involving his niece.<sup>1</sup> The trial court sentenced defendant, as a third-offense habitual offender, MCL 769.11, to 46 years and 10 months to 75 years' imprisonment for each of his CSC I convictions and to 20 to 30 years' imprisonment for his CSC II conviction. We affirm.

Defendant argues that the trial court abused its discretion by admitting other-acts evidence under MRE 404(b). We disagree.

This Court reviews a trial court's decision to admit evidence for an abuse of discretion. *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010). If the trial court's decision results in an outcome within the range of principled outcomes, the court has not abused its discretion. *People v Musser*, 494 Mich 337, 348; 835 NW2d 319 (2013).

MRE 404(b) governs the admission of other-acts evidence and provides, in relevant part:

(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,

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<sup>1</sup> The niece testified that she was 14 years old at the time of trial.

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.

“MRE 404(b) is a rule of inclusion, allowing relevant other acts evidence as long as it is not being admitted solely to demonstrate criminal propensity.” *People v Martzke*, 251 Mich App 282, 289; 651 NW2d 490 (2002). The list of exceptions provided in MRE 404(b) is not exhaustive. *People v Sabin*, 463 Mich 43, 56; 614 NW2d 888 (2000). For other-acts evidence to be admissible under MRE 404(b), it must be offered for a proper purpose, it must be relevant, and its probative value must not be substantially outweighed by its potential for unfair prejudice. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004).

A proper purpose is one other than establishing the defendant’s character to show his or her propensity to commit the offense. *People v Johnigan*, 265 Mich App 463, 465; 696 NW2d 724 (2005). MRE 401 provides that “‘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.” “[E]vidence of misconduct similar to that charged is logically relevant to show that the charged act occurred if the uncharged misconduct and the charged offense are sufficiently similar to support an inference that they were manifestations of a common plan, scheme, or system.” *Sabin*, 463 Mich at 63.

The trial court did not abuse its discretion by admitting the other-acts evidence here to show a common plan, scheme or system in doing an act. The record demonstrates defendant’s scheme of twice targeting his family members, the niece and his half-sister, for sexual abuse within a period of approximately three months. In both circumstances, defendant isolated his victims—in a van in an alley and in an apartment—after giving “innocent” reasons for spending time with them (in the case of the half-sister, he offered her a ride, and in the case of the niece, he was going to buy gifts for her immediate family). Also, both incidents involved defendant forcefully undressing the victims and penetrating their vaginas with his penis. Moreover, defendant mentioned providing money to both victims. He also made both the niece and the half-sister swear on their grandmother’s grave that they would not disclose what had happened to them. Defendant exhibited force with both victims, who did not consent to his sexual abuse. In both cases, defendant was in his thirties and he targeted a significantly younger, teenaged victim. From the common features of these offenses, one could infer that defendant had a system that involved taking advantage of a familial relationship to perpetrate abuse. Ultimately, the trial court’s decision that the similarities between the two incidents supported an inference of a common scheme, plan, or system in doing an act was not outside the range of principled outcomes.

Furthermore, given its strong probative value, the admission of this other-acts evidence was not more prejudicial than probative. Defendant correctly states that the trial court merely asserted that the evidence was not unduly prejudicial without expressly balancing the probative value and the prejudicial effect. However, a trial court need not state on the record how it weighed these potential effects. *People v Smith*, 243 Mich App 657, 675; 625 NW2d 46 (2000), remanded on other grounds 465 Mich 931 (2001). Here, the trial court mentioned the substance of MRE 403 (the court mentioned “the prejudicial [e]ffect towards [sic] the probative value”), and we presume that the court knew the law. *People v Gaines*, 306 Mich App 289, 302 n 8; 856

NW2d 222 (2014). Also, contrary to defendant’s claim on appeal, the evidence was not admitted to show propensity. The trial court instructed the jury regarding the limited purposes for the evidence and that it could not be used to prove that defendant was likely to commit crimes. A jury is presumed to follow its instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

Defendant argues that because “credibility” is not listed as one of the allowable purposes for other-acts evidence in MRE 404(b)(1), it was an abuse of discretion for the trial court to mention credibility when making its initial rulings. First, defendant’s argument is misguided because the list in MRE 404(b)(1) is not an exhaustive list. *Sabin*, 463 Mich at 56. Second, the trial court instructed the jury, in relevant part:

You heard evidence that was introduced to show that the Defendant committed other improper acts for which he is not on trial. This is regarding the testimony of [the half-sister] basically. If you believe this evidence, you must be very careful only to consider it for certain purposes. You may only consider whether this evidence tends to show that the Defendant used a plan, system or characteristic scheme that he has used before or since to help you judge the credibility of the testimony regarding the acts for which the Defendant is not<sup>[2]</sup> on trial. You must not consider this evidence for any other purpose. For example, you must not decide that it shows that the Defendant is a bad person and that he is likely to commit crimes because of that testimony. You must not convict the testimony [sic] here because you think he is guilty of other bad conduct.

It is clear that the trial court was mentioning “credibility” as blended with the scheme, plan, or system.<sup>3</sup> In other words, the scheme or plan would help to bolster the prosecutor’s case. We find no error.

Moreover, even if we were to conclude that the trial court abused its discretion by mentioning credibility in its initial rulings, such an error was harmless, *People v Knapp*, 244 Mich App 361, 378; 624 NW2d 227 (2001) (holding that when there is error in the admission of other-acts evidence, reversal is not required unless it affirmatively appears that it is more probable than not that the error was outcome-determinative), and defendant also cannot establish plain error affecting his substantial rights with respect to his unpreserved due process claim, *People v Vaughn*, 491 Mich 642, 663-664; 821 NW2d 288 (2012). Indeed, the victim’s testimony was detailed, medical evidence supported her testimony, and the other-acts evidence was clearly admissible to show a common plan, scheme or system. There is no basis for reversal.

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<sup>2</sup> It is not clear to us whether this “not” was improperly inserted into the instructions, but its existence is not raised as an issue on appeal.

<sup>3</sup> We note that the prosecution introduced the evidence, in its written notice, to show a “common scheme, plan, and system . . . .”

Affirmed.

/s/ Christopher M. Murray

/s/ Patrick M. Meter

/s/ Donald S. Owens