

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK JOHN PINKOWSKI,

Defendant-Appellant.

UNPUBLISHED

October 12, 2026

9:47 AM

No. 374744

Hillsdale Circuit Court

LC No. 2023-475475-FH

Before: YOUNG, P.J., and REDFORD and FEENEY, JJ.

PER CURIAM.

Defendant, Patrick John Pinkowski, appeals as of right his jury-trial convictions of accosting a child for immoral purposes, MCL 750.145a, and second-degree criminal sexual conduct (CSC-II), MCL 750.520c(1)(b). Pinkowski was sentenced to one year in jail for each conviction and five years’ probation. We affirm.

I. FACTUAL BACKGROUND AND PROCEDURAL HISTORY

This case arises out of Pinkowski’s sexual conduct toward a minor, ES. In the summer of 2022, Pinkowski was 27 years old and worked as the Health Officer for a children’s camp. ES was 14 years old and worked as a counselor-in-training at the camp. One night, while Pinkowski and the female counselors in training were playing a game, Pinkowski reached over into ES’s lap and hit her inner thighs, brushing against her vagina as he made “moaning noises” while “throwing his head back.” ES was uncomfortable and left to get cereal at the camp lodge. Pinkowski’s housing was also located at the lodge. Pinkowski eventually appeared while ES was alone and eating cereal and sat across from her. ES began mimicking Pinkowski’s movements to “lighten the mood.” Pinkowski became aware and purposefully began initiating movements for ES to copy. ES mimicked Pinkowski’s movements until Pinkowski grabbed his chest and then opened his legs and made motions mimicking female masturbation. ES did not copy the moves and Pinkowski asked: “So, why did you come here, to have sex with me?” ES did not respond and returned to her housing. Pinkowski was charged as noted.

Before trial, the prosecution sought to admit evidence of 11 other acts and comments by Pinkowski related to ES. The trial court partially granted the motion and at trial, testimony

regarding Pinkowski's other inappropriate comments and conduct was admitted. These acts included (1) Pinkowski placing a heart rate monitor on the ES's finger and asking if she was sexually interested in him; (2) Pinkowski pulling ES onto a couch with him; (3) Pinkowski placing ES's feet on his lap making contact with Pinkowski's penis over his clothes; (4) multiple incidents of Pinkowski simulating masturbation; (5) Pinkowski staring and gazing at ES's breasts as she exited the bathroom after a shower in pajamas while not wearing a bra; and (6) a conversation about Pinkowski's sex life and with whom ES would have sex.

At trial, ES and several other witnesses testified, including other camp employees. In delivering its closing argument, the prosecution stated:

And so, you've heard specifically that [Pinkowski's] been charged with two things, right. So, we've got the incident where they're in the staff lounge by themselves where [Pinkowski] encourages or solicits [ES] to have sex with him based on her interpretation of what happened. I think a reasonable interpretation, right. [ES is] 14, she's there [Pinkowski's] talking to her about all these other things, he's you know, on these other occasions these other things are happening. He's playing this game with her, and then he prompts this conversation, right.

Under MCL 750.145a, there are two theories of liability: Accosting, enticing or soliciting a child to induce a proscribed act, or encouraging a child to commit a proscribed act. At trial, defense counsel requested a jury instruction requiring the jury to unanimously decide under which theory to convict Pinkowski. The trial court denied the request. Pinkowski was found guilty and now appeals.

II. ANALYSIS

Pinkowski argues his accosting conviction should be reversed or vacated and remanded for a new trial because (1) the trial court abused its discretion in admitting other acts evidence; (2) the trial court erred in failing to give a unanimity instruction specifying which behaviors referenced in MCL 750.145a served as the basis for Pinkowski's guilt; and (3) there was insufficient evidence to sustain Pinkowski's conviction. We disagree.

A. OTHER ACTS EVIDENCE

Pinkowski contends the trial court abused its discretion by admitting other acts evidence. We disagree. This Court reviews "a trial court's decision to admit or exclude evidence for an abuse of discretion." *People v Hoskins*, 342 Mich App 194, 200; 993 NW2d 48 (2022). "[W]e review de novo the proper interpretation and application of court rules." *People v Traver*, 502 Mich 23, 31; 917 NW2d 260 (2018) (citation omitted). "To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal." *People v Thorpe*, 504 Mich 230, 252; 934 NW2d 693 (2019). Defense counsel objected to the admissibility of the other acts evidence under MRE 404(b), and therefore the issue is preserved.

The prosecution moved to admit other acts evidence under MRE 404(b)(1). At the time the matter was decided¹, MRE 404(b) stated as follows:

(1) Prohibited Uses. Evidence of any other crime, wrong, or act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) Permitted Uses. If it is material, the evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, absence of mistake, or lack of accident.

However, the trial court quoted the earlier version of MRE 404(b) as provided by the prosecution in their motion:

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.

Pinkowski does not contend the error in referencing the earlier version of the wording of the court rule was grounds for reversal. Nevertheless, the court rules are not substantially different, and the error does not constitute reversible error.

Pinkowski contends that admitting the other acts evidence was improper because the prosecution merely recited the exception listed in MRE 404(b) without explaining the relevance of the incidents. However, in its motion, the prosecution argued that Pinkowski's state of mind was directly at issue in both charged offenses, and that his other comments and acts occurring in the same time frame established his intent, plan, and state of mind. The trial court noted the prosecution sought "to show that [Pinkowski] was sexually interested in ES and that his actions were done for sexual gratification."

More to the point, accosting a child for immoral purposes includes two theories of liability. See *People v Darga*, 349 Mich App 1, 11-12; 27 NW3d 298 (2023). The first theory requires the prosecution to prove Pinkowski "(1) accosted, enticed, or solicited (2) a child (or an individual whom [Pinkowski] believed to be a child) (3) with the intent to induce or force that child to commit (4) a proscribed act." *Id.* at 11. The second theory requires showing Pinkowski "(1) encouraged (2) a child (or an individual whom . . . [Pinkowski] believed to be a child) (3) to commit (4) a

¹ The Michigan Rules of Evidence were amended on September 20, 2023, and became effective on January 1, 2024. The trial court order was entered on October 31, 2024.

proscribed act.” *Id.* at 11-12. Pinkowski’s general denial of both charges placed all elements at issue, including the touching of ES for sexual purposes under MCL 750.520c(1)(b), and the intent to induce sexual activity under MCL 750.145a. Thus, the trial court correctly reasoned that “[t]he Prosecution offers an explanation following each recited purpose, seeking admissibility as proof of motive and intent in a case where Defendant’s intent is an element of each of the pending charges.”

The other acts evidence, consisting of Pinkowski’s inappropriate acts and comments, demonstrated his intentions while touching ES’s thighs and vagina as well as his intention in asking, “So, why did you come here, to have sex with me?” Further, “evidence of sufficiently similar prior bad acts can be used to establish a definite prior design or system which included the doing of the act charged as part of its consummation.” *People v Smith*, 282 Mich App 191, 196; 772 NW2d 428 (2009) (citation and quotation marks omitted). Pinkowski’s uncharged conduct leading to the charged conduct shows his common scheme for gaining access to ES through his position as an authority figure at the camp. For similar reasons, the evidence is also relevant. *People v Gerwatowski*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 374157); slip op at 8.

Regarding the probative value of the evidence, “the third prong of [the *VanderVliet*]² standard requires nothing more than the balancing process described in MRE 403.” *People v Starr*, 457 Mich 490, 498; 577 NW2d 673 (1998) (citation omitted). Under MRE 403,

[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence.

“All evidence offered by the parties is prejudicial to some extent, but the fear of prejudice does not generally render the evidence inadmissible. It is only when the probative value is substantially outweighed by the danger of unfair prejudice that evidence is excluded.” *Gerwatowski*, ___ Mich App ___, slip op at 10 (quotation marks and citation omitted). “Evidence is unfairly prejudicial if it has a tendency to adversely affect the objecting party’s position by injecting considerations extraneous to the merits of the lawsuit, e.g., the jury’s bias, sympathy, anger, or shock.” *People v Berklund*, ___ Mich App ___, ___; ___ NW3d ___ (2026) (Docket No. 374157); slip op at 9 (quotation marks and citation omitted).

Pinkowski argues the prejudicial effect of allowing his other comments to be admitted substantially outweighed any probative value. While the other acts could be prejudicial, such effect did not substantially outweigh any probative value of the evidence. The other acts all related to the same person—ES. All the acts and comments occurred within the same general time frame and location, involving the two months ES worked at the camp. As such, Pinkowski’s conduct and comments were highly probative of his intent to engage in sexual activity with ES and related

² *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993).

to the required elements of the charged offenses. Consequently, the trial court did not abuse its discretion in admitting the other acts evidence.

B. JURY INSTRUCTIONS

Pinkowski contends the court improperly instructed the jury by not requiring a unanimous decision of which theory to convict him of under MCL 750.145a. We disagree. “We review de novo claims of instructional error and must consider the instructions as a whole, rather than piecemeal, to determine whether any error occurred.” *Traver*, 502 Mich at 31 (citation and quotation marks omitted). “[A]n imperfect instruction is not grounds for setting aside a conviction if the instruction fairly presented the issues to be tried and adequately protected the defendant’s rights.” *Id.* at 34 (citation and quotation marks omitted).

A criminal defendant has a right to a unanimous verdict. Const 1963, art I, § 14; MCR 6.410(B). “In order to protect a defendant’s right to a unanimous verdict, it is the duty of the trial court to properly instruct the jury regarding the unanimity requirement.” *People v Chelmicki*, 305 Mich App 58, 68; 850 NW2d 612 (2014) (citation and quotation marks omitted). “However, a specific unanimity instruction may be required in cases in which more than one act is presented as evidence of the *actus reus* of a single criminal offense and each act is established through materially distinguishable evidence that would lead to juror confusion.” *Id.* (citation and quotation marks omitted). Here, such an instruction was not needed.

“Under MCL 750.145a, a defendant may be convicted under one of two theories of criminal liability: (1) accosting, enticing, or soliciting or (2) encouraging.” *Darga*, 349 Mich App at 5 (citation and quotation marks omitted). “This Court held that when a statute lists alternative means of committing an offense which in and of themselves do not constitute separate and distinct offenses, jury unanimity is not required with regard to the alternate theory.” *Chelmicki*, 305 Mich App at 68.

In this instance, the trial court informed the jury that the prosecutor must prove beyond a reasonable doubt “[Pinkowski] accosted, enticed, solicited, or encouraged [ES].” However, the trial court did not require the jury to unanimously decide under which statutory theory Pinkowski was guilty. In *Chelmicki*, this Court found “defendant was properly convicted of unlawful imprisonment even if some jurors believed he restrained the victim by means of a weapon, and the rest of the jurors believed he restrained the victim in order to facilitate the commission of the felony of arson (preparation to burn).” *Id.* at 68-69. Similarly, Pinkowski was properly convicted of accosting a minor for immoral purposes whether he did so by accosting, soliciting, and enticing ES or by encouraging her to commit an immoral act. Like the statute providing alternative theories in *Chelmicki*, under MCL 750.145a, “[t]he alternative theories each relate to a single element of the offense, and are merely different ways of establishing that element.” *Chelmicki*, 305 Mich App at 68.

Here, there were no alternate theories of the charge pursued, but rather only other acts evidence providing factual context. Pinkowski was charged with accosting a minor specifically for asking: “So, why did you come here, to have sex with me?” As such, there was one act which constituted the factual basis of the charge. The trial court stated, “I think that we have the same

act that is applying under two different theories, and for that reason, I'm going to deny your request."

C. SUFFICIENCY OF THE EVIDENCE

Pinkowski contends there was insufficient evidence to support the conviction of accosting a minor for immoral purposes. We disagree. Challenges to the sufficiency of the evidence are reviewed de novo. *People v Montague*, 338 Mich App 29, 44; 979 NW2d 406 (2021). "For a jury to find a defendant guilty of a charged crime, the prosecution must demonstrate that the defendant is guilty of every element of a crime beyond a reasonable doubt." *People v Posey*, 512 Mich 317, 323; 1 NW3d 101 (2023). "It is for the trier of fact, not the appellate court, to determine what inferences may be fairly drawn from the evidence and to determine the weight to be accorded those inferences." *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002).

Pinkowski was convicted of accosting a child for immoral purposes under MCL 750.145a, which states:

[a] defendant is guilty of accosting a minor if the prosecution proves beyond a reasonable doubt that the defendant (1) accosted, enticed, or solicited (2) a child (or an individual whom the defendant believed to be a child) (3) with the intent to induce or force that child to commit (4) a proscribed act. Alternatively, a defendant is guilty of accosting a minor if the prosecution proves beyond a reasonable doubt that the defendant (1) encouraged (2) a child (or an individual whom the defendant believed to be a child) (3) to commit (4) a proscribed act. Taken as a whole, the statute permits conviction under two alternative theories, one that pertains to certain acts and requires a specific intent and another that pertains to encouragement only and is silent with respect to *mens rea*. [*Kowalski*, 489 Mich at 499.]

This Court has adopted the "ordinary definitions" of accost, solicit, induce, and encourage as defined by the dictionary. *Darga*, 349 Mich App at 12-13. As such, "[e]ntice means to attract artfully or adroitly, or by arousing hope or desire." *Id.* at 13 (citation omitted). "Solicit means to approach with a request or a plea, to urge strongly, or to entice or lure, especially into evil." *Id.* (citation omitted). "Induce means to move by persuasion or influence; to call forth or bring about by influence or stimulation." *Id.* (citation omitted). "Encourage means to inspire with courage, spirit or hope; to attempt to persuade." *Id.* (citation omitted).

At trial, ES testified she was 14 years old while working at the camp and interacting with Pinkowski. ES described going to the lodge alone to eat cereal and getting space away from the loud apartment. ES was alone with Pinkowski in the lodge, late at night, when he asked her: "So, why did you come here, to have sex with me?" Pinkowski's housing was also located in the lodge. ES did not answer Pinkowski's question, pretending she did not hear him, and he repeated the question. ES felt "really uncomfortable" because she believed Pinkowski's question meant to ask her to have sex with him. Immediately before, Pinkowski attempted to have ES mimic him by grabbing his chest, which would have made her grab her breasts. Pinkowski then tried to have ES mimic acts representing female masturbation. In an earlier encounter, Pinkowski touched ES's

inner thighs and vagina while making moaning noises. Viewed in the light most favorable to the prosecution, a jury could find the evidence sufficiently established that Pinkowski intended to accost, solicit, induce, or encourage ES to have sex with him.

For the reasons explained above, we affirm.

/s/ Adrienne N. Young
/s/ James Robert Redford
/s/ Kathleen A. Feeney