

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 27, 2007

A. John Voelker
Acting Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2006AP2025-CR

Cir. Ct. No. 2005CF76

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

PAUL-MICHAEL JONATHAN HANKS, A/K/A PAUL MICHAEL STARDUST,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Vilas County:
NEAL A. NIELSEN, III, Judge. *Reversed and cause remanded.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. The State appeals part of an order denying its pre-trial motion to admit other acts evidence at Paul-Michael Hanks's trial on fourteen

counts of child enticement.¹ The complaint charges Hanks, a music minister, with enticing J.L.V., one of his students, into private areas for sexual encounters. The other acts evidence consists of very similar “grooming” and sexual contact with three students in Renssalaer, Indiana, thirty years earlier. The trial court disallowed the evidence, reasoning that the evidence could not demonstrate Hanks’s intent, motive, or plan to entice J.L.V. because she was not even born at the time of the earlier incidents. The court concluded that the exceptions set out in WIS. STAT. § 904.04(2) would apply only if they showed Hanks’s intent, motive or plan to commit these offenses against this victim. The trial court further ruled that the evidence might be admitted in rebuttal if J.L.V.’s credibility were challenged during the trial. Because the trial court made its discretionary ruling based on an erroneous view of the law, we reverse the order and remand the matter for the trial court to exercise its discretion using a proper legal standard.

¶2 Evidence of other crimes, wrongs or acts is admissible to prove motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident. *See* WIS. STAT. § 904.04(2). Although the decision to admit or exclude other acts evidence is discretionary, discretion is not properly exercised if the trial court applies the wrong legal standard. *See State v. Muckerheide*, 2007 WI 5, ¶17, ___ Wis. 2d ___, 725 N.W.2d 930. The trial court’s decision in this case rests on two errors of law. First, the law does not recognize a distinction

¹ The trial court also disallowed evidence of two fourth-degree sexual assault convictions in 1981. The State was unable to locate the victim in that case, and proposed introducing the criminal complaint and judgment of conviction. Because the convictions resulted from a plea agreement to a lesser offense and the victim never testified, the trial court concluded the victim’s statements to police were uncorroborated hearsay and Hanks’s pleas did not truly acknowledge his guilt. The State does not address that rationale on appeal or specifically challenge the ruling relating to that issue.

between the admissibility of other acts evidence in the State's case-in-chief or in rebuttal. If the evidence is admissible in rebuttal, it is also admissible in the State's case-in-chief. See *State v. Friedrich*, 135 Wis. 2d 1, 17 n.7, 398 N.W.2d 763 (1986).

¶3 Second, the trial court imposed overly restrictive definitions when it restricted evidence of Hanks's intent, motive or plan to these offenses against this victim. "Plan" has been defined to include a "system of criminal activity" comprised of multiple acts of a similar nature. *Id.* at 24. When establishing a defendant's *modus operandi*, acts against other victims are admissible to show motive, intent or plan. See *Day v. State*, 92 Wis. 2d 392, 405, 284 N.W.2d 666 (1979). The earlier offenses need not be aimed at committing the present offenses. On remand, the trial court shall employ the methodology set out in *State v. Sullivan*, 216 Wis. 2d 768, 772, 578 N.W.2d 30 (1998), applying a broader definition of motive, intent and plan to include acts committed against other victims that show Hanks's *modus operandi*.

By the Court.—Order reversed and cause remanded.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

