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State v. Kirsch

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Citation. [549 U.S. 1295](#)

Brief Fact Summary. Following a jury trial, David W. Kirsch (Defendant) was convicted of various sexual offenses committed against minors. At trial, the court allowed testimonial evidence to be heard by the jury of other alleged sexual assaults unrelated to the present charge, and allegedly committed against various other young women. Defendant appeals his conviction here.

Synopsis of Rule of Law. New Hampshire's equivalent to Federal Rule of Evidence 404(b) prohibits the admission of evidence of "other crimes, wrongs, or acts . . . in order to show the person acted in conformity therewith," and only allows evidence of prior bad acts to be admitted when it is offered to prove such things as motive, intent, or a common plan.

Facts. Defendant was a member of the Granite State Baptist Church in Salem, and drove the church bus that drove the victims to church; Defendant also attended overnight sleep-overs at the church. Defendant was charged with various sexual assault crimes, based on the allegations of three young girls. At trial, the prosecution attempted to introduce testimony of those three victims, as was the testimony of three other women pursuant to Federal Rule of Evidence 404(b); the testimony of the latter concerned sexual abuse allegedly committed against them by Defendant. The trial court allowed the testimony of the uncharged acts, ruling that the evidence was relevant to prove motive, intent, and common plan or scheme, and therefore was admissible under Rule 404(b).

Issue.

Was the testimony from the alleged victims of the uncharged crimes properly admitted under Rule 404(b) as evidence of Defendant's motive, intent, and/or common plan or scheme?

[« Previous](#) [1](#) [2](#) [Next »](#)

Page:

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