

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TERRANCE DESHAWN TURNER,

Defendant-Appellant.

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UNPUBLISHED

May 30, 1997

No. 190108

Recorder's Court

LC No. 94-012201 FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REGINALD EUGENE TURNER,

Defendant-Appellant.

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No. 190109

Recorder's Court

LC No. 94-012201 FC

Before: Holbrook, Jr., P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

In these consolidated appeals, defendants appeal as of right their August 22, 1995, joint jury trial convictions. Defendant Terrence Deshawn Turner was convicted of armed robbery, MCL 750.529; MSA 28.797, first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), receiving and concealing stolen property over \$100, MCL 750.535(a); MSA 28.803(1), and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to 3½ to 15 years for the armed robbery, 3 to 20 years for the home invasion, and 1 to 5 years for the receiving and concealing conviction, preceded by a mandatory two-year consecutive sentence for the felony-firearm conviction. Defendant Reginald Eugene Turner was convicted of armed robbery, MCL 750.529; MSA 28.797, first-degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), and

receiving and concealing stolen property over \$100, MCL 750.535(a); MSA 28.803(1). Defendant Reginald Eugene Turner was found not guilty of felony-firearm, and was sentenced to 3 to 15 years for the armed robbery, 3 to 20 years for the home invasion, and 1 to 5 years for the receiving and concealing conviction. We affirm.

Defendant Terrance Turner asserts that it was an abuse of discretion for the trial court to allow evidence, under MRE 404(b), regarding his alleged involvement in a robbery which occurred a week prior to the offense in this case. Defendant argues that the degree of similarity between the two offenses was not sufficiently great in order to overcome the danger of prejudice. We disagree. MRE 404(b)(1) allows the admission of evidence of other crimes to prove, *inter alia*, the identity of the defendant as the perpetrator of the charged crime. To be admissible, the evidence must be 1) offered for a proper purpose under MRE 404(b)(1); 2) relevant under MRE 402; and 3) its probative value must not be *substantially* outweighed by unfair prejudice under MRE 403. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), modified on other grounds, 445 Mich 1205; 520 NW2d 338 (1994). The trial court may, upon request, provide a limiting instruction to the jury. *Id.*; *People v Basinger*, 203 Mich App 603, 605-606; 513 NW2d 828 (1994). Where the proponent is utilizing a modus operandi theory to prove identity, then there must be a “distinguishing, peculiar or special characteristic” linking the prior act to the charged offense. *People v Golochowicz*, 413 Mich 298, 322; 319 NW2d 518 (1982).

The evidence regarding the robbery of Delawna Thornton was offered for the purpose of showing defendant Terrance Turner’s identity in the instant crime based upon the similarity in the two robberies. This was a proper purpose under MRE 404(b)(1). Second, the evidence was relevant under MRE 402, as defendant’s general denial of guilt and theory of misidentification by the complainant made the identity of the perpetrator a central issue. Third, the prejudice to defendant did not substantially outweigh the probativeness of the evidence under MRE 403. The similarities between the prior offense and the charged offense, i.e., the perpetrator’s car blocking escape from the driveway by parking perpendicular to it, multiple actors surrounding the victim’s car, the victim being forced out of his car at gunpoint to lie down on the ground, the robbery of the victim, and the proximity of the crime scenes to each other, were numerous enough to constitute a “signature.” We believe it was not an abuse of discretion for the trial court to admit the evidence under 404(b)(1).

Similarly, we do not believe that reversal of defendant Reginald Turner’s convictions is warranted due to his trial counsel’s failure to request a separate jury. A defendant’s right to a separate jury in a joint trial is a partial form of severance, and must be evaluated under the standards applicable to motions for separate trials. See *People v Hana*, 447 Mich 325, 345-346; 524 NW2d 682 (1994). MCR 6.121(C) mandates severance of a trial upon a showing that severance is necessary to avoid prejudice to the substantial rights of the defendant. In the instant case, a common jury heard evidence that codefendant Terrance Turner was involved in the robbery of Delawna Thornton. Although Thornton did not suggest that she could identify Reginald Turner in her case, her testimony did indicate that the second individual in the carjacking was a dark skinned man wearing a “Fila” jacket. This mirrored complainant Trooper William Fields’ description of Reginald Turner in the instant offense. Had defendants been tried by separate juries, the prior acts evidence used against codefendant

Terrance Turner would have been inadmissible and could not have been heard by the Reginald Turner jury. Where a jury in a joint trial may be exposed to evidence which would otherwise be inadmissible in a separate trial, severance is warranted. See *Hana, supra*, 447 Mich 360. Accordingly, it could be argued that counsel's failure to request separate juries in light of the trial court's decision to admit the similar acts evidence against codefendant Terrance Turner was a serious error. However, even assuming error, we cannot state that it was prejudicial. While the case against Reginald Turner was not "overwhelming" in the sense that there was an abundance of witnesses or corroborating evidence, the complaining witness, William Fields, testified that he was certain about his identification of Reginald Turner, and defendants' alibi evidence simply did not foreclose the possibility that Reginald Turner was involved in the robbery. Accordingly, we cannot state that there is a reasonable probability that, but for counsel's error, Reginald Turner would have been acquitted. No reversal is required.

Next, both defendants argue that their identifications in a lineup should have been suppressed because of the possibility that complainant, William Fields, identified them after hearing an argument between police officers and the lineup attorney in another room. At defendants' motion to suppress the identifications, the lineup attorney testified that the officers had loudly indicated the names of the suspects and their positions in the lineup, and that he became concerned when he realized that Fields was being held in an adjacent room. Logic dictates that the only way this scenario could have had an unduly suggestive effect on the identification procedure, is if Fields had heard the alleged suggestive exchange. The record indicates, however, that Fields did not hear any discussions pertaining to the lineup, nor any suggestions regarding the suspects' identities or positions in the lineup. We believe that the trial court's finding that the identification procedure was not unduly suggestive was not clearly erroneous.

Finally, because we found no error with respect to defendants' individual claims on appeal, we cannot state that there is cumulative error requiring reversal. See *People v Moseler*, 202 Mich App 296, 299; 508 NW2d 192 (1993).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Barbara B. MacKenzie

/s/ William B. Murphy