

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DOUGLAS LEONARD TAYLOR,

Defendant-Appellant.

UNPUBLISHED

May 13, 2003

No. 236889

Kalamazoo Circuit Court

LC No. 00-001082-FC

Before: Saad, P.J., and Meter and Owens, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction of second-degree murder, MCL 750.317. The trial court sentenced defendant as a second-offense habitual offender, MCL 769.10, to a term of life imprisonment. We affirm.

Defendant contends that the trial court erred in admitting evidence of defendant's armed robbery of Harold Saddler because it was inadmissible pursuant to MRE 404(b)(1). MRE 404(b)(1) states in pertinent part as follows:

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.

Here, the prosecution's theory was that defendant robbed Sadler shortly after defendant purportedly murdered the victim because defendant needed Sadler's car to flee the jurisdiction.

A trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v Cain*, 238 Mich App 95, 122; 605 NW2d 28 (1999). An abuse of discretion will be found only where "an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made." *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000).

“To be admissible under MRE 404(b)(1), bad acts evidence must satisfy three requirements: (1) it must be offered for a proper purpose, (2) it must be relevant, and (3) its probative value must not be substantially outweighed by its potential for unfair prejudice.” *People v Magyar*, 250 Mich App 408, 413-414; 648 NW2d 215 (2002). Here, the evidence was offered to establish defendant’s attempt to flee.¹ There was other evidence that, before robbing Sadler, defendant had unsuccessfully attempted to purchase the car that was used to transport the victim’s body. In fact, defendant fled the jurisdiction and was ultimately arrested in Ludington for the armed robbery of Saddler. As such, the evidence was not offered merely to suggest that defendant had a criminal propensity, but to establish defendant’s flight from the jurisdiction. *Id.*

MRE 401 defines “relevant evidence” as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence.” Here, as noted above, the robbery of Sadler was part of an attempt to flee, which, in turn, was relevant to defendant’s consciousness of guilty. See *Coleman, supra* at 4. Accordingly, we conclude that the evidence was relevant. *Magyar, supra* at 413-414.

As noted above, the probative value of the evidence must not be substantially outweighed by the potential for unfair prejudice. *Magyar, supra* at 413-414. Here, there was a risk of unfair prejudice because the jury could have used the evidence to conclude that defendant was a violent person and, therefore, more likely to commit the instant offense. Although there was a risk of unfair prejudice, we are not persuaded that the risk of unfair prejudice substantially outweighed the probative value of the evidence. Moreover, a decision on a close evidentiary question is ordinarily not an abuse of discretion. *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001). Consequently, the trial court did not err in admitting the evidence in question. *Cain, supra* at 122.

Defendant also contends that the trial court erred in instructing the jury with CJI2d 4.4, which is the criminal jury instruction pertaining to evidence of flight. “Jury instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them.” *People v Piper*, 223 Mich App 642, 648; 567 NW2d 483 (1997). We review jury instructions to determine whether, taken as a whole, “the instructions fairly presented the issues to be tried and sufficiently protected the defendant’s rights.” *Id.* Here, there was evidence suggesting that defendant robbed Sadler to flee the jurisdiction in Sadler’s car because defendant had murdered the victim. Accordingly, the jury instruction on flight was factually appropriate. *Id.* Moreover, given that the jury instruction notes that a person may flee for innocent reasons, the jury instructions as a whole both fairly presented the issues to be tried and protected defendant’s rights. *Id.*

Defendant also contends that the trial court erred by failing to include CJI2d 5.13 in its jury instructions. CJI2d 5.13 pertains to witness agreements in exchange for testimony. The

¹ Evidence of flight is admissible in Michigan. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). “The term ‘flight’ has been applied to such actions as fleeing the scene of the crime, leaving the jurisdiction, running from the police, resisting arrest, and attempting to escape custody.” *Id.* The evidence is probative because it may indicate consciousness of guilt. *Id.*

prosecution's primary witness was allowed to plead guilty to accessory after the fact, and defendant contends that there was "reason to believe" that this witness could have been charged with aiding and abetting a murder. However, defendant also notes that there was no evidence of an agreement with the prosecutor or even that the witness was offered a deal. In the absence of any evidence regarding an agreement, the trial court did not err in failing to instruct the jury with CJI2d 5.13; consequently, we reject defendant's contention of instructional error. *Piper, supra* at 648.

Finally, defendant contends that he is entitled to a new trial based on newly discovered evidence; however, appellate counsel for defendant stipulates that "there is no valid 'issue three' before this Court." Consequently, we decline to address this issue.²

Affirmed.

/s/ Henry William Saad

/s/ Patrick M. Meter

/s/ Donald S. Owens

² In addition, the issue was not raised below, nor was it considered by the trial court. Further, there is no indication that the documents appended to defendant's appeal were part of the record below. Thus, there are several factors supporting our decision not to consider the issue.