

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
May 22, 2012

v

ANDREW RONALD-GORDON ROZGA,

Defendant-Appellant.

No. 301676
Manistee Circuit Court
LC No. 10-004026-FH

Before: OWENS, P.J., and TALBOT and METER, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction by a jury of first-degree home invasion, MCL 750.110a(2)(b). The trial court sentenced him to six to 20 years in prison. We affirm.

The prosecution alleged that defendant entered a home occupied by a woman and her 12-year-old daughter and that a purse and a backpack were missing after defendant left the home. The woman testified that a sliding door to the home was unlocked at the time of the incident because she had planned to go outside and smoke. The police apprehended defendant the following week after the 12-year-old girl saw him walking in her neighborhood. At the time of his arrest, defendant was carrying a camera that had been taken from a nearby home. The child identified defendant in a lineup and at trial as the person she saw in her house on the night of the incident.

Over defendant's objection, the prosecution presented other-acts evidence consisting of testimony regarding (1) four other home invasions, (2) an incident of entry into an apartment by way of a ladder to the balcony,¹ and (3) an incident involving an allegedly stolen bicycle. All the home invasions occurred in the same north-side Manistee neighborhood and within approximately one month of each other. They occurred on hot nights, and in each instance the perpetrator gained entrance by way of an open or unlocked door.

¹ The resident did not object to defendant's presence in her apartment.

With regard to the ladder incident, the police responded to a call concerning a ladder leading to an apartment-complex balcony. The police arrived and found defendant leaving the building. Defendant was carrying a nearly full pack of cigarettes of the same brand taken from a home that same night, as well as a pocket knife that could have been used to cut a screen that night at a second home. With regard to the bicycle incident, a witness testified that defendant came inside her residence and took a bicycle.

The trial court instructed the jury as follows regarding consideration of the other-acts evidence:

You may only think about whether this evidence tends to show that the defendant had a plan, system, scheme, or a characteristic way that he has used before or after the crime involved here. And you may also use that evidence to show who committed the crime for which he's being charged here. That is, the identity of that defendant in the home invasion that we are dealing with in this trial. You must not consider that other evidence for any other purpose. For example, you must not decide that it shows that the defendant is a bad person, or that he's likely to commit crimes. You must not convict the defendant here because you think he might be guilty of other bad conduct.

Defendant argues that the trial court abused its discretion by admitting the other-acts evidence because the evidence did not meet the requirements for admission under MRE 404(b)(1) and because any probative value the evidence had was substantially outweighed by the danger of unfair prejudice. We disagree.

We review for an abuse of discretion a trial court's decision to admit or exclude evidence. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003).

MRE 404(b)(1) provides:

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.

To be admissible under this rule, evidence must be offered for a proper purpose, it must be logically relevant to a material fact in the case, and its probative value cannot be substantially outweighed by the danger of unfair prejudice. *People v Steele*, 283 Mich App 472, 479; 769 NW2d 256 (2009).

A proper purpose for offering other-acts evidence is one other than establishing the defendant's character to show his propensity to commit the charged offense. *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). MRE 404(b)(1) provides a list of proper purposes, as quoted above. This list is nonexclusive. *People v Sabin (After Remand)*, 463 Mich 43, 56; 614 NW2d 888 (2000).

Again, other-acts evidence must be relevant to a material fact in the case, *VanderVliet*, 444 Mich at 74, and relevant evidence is defined as “evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” MRE 401. However, even relevant other-acts evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice. MRE 403.

MCL 750.110a(2) provides:

A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:

- (a) The person is armed with a dangerous weapon.
- (b) Another person is lawfully present in the dwelling.

Defendant’s argument that there was neither enough similarity between the charged home invasion and the uncharged acts nor enough connection between him and the uncharged acts to allow the evidence to be admitted is without merit. The other-acts evidence showed that later on the night the charged offense occurred, another break-in occurred at a nearby home that had also been broken into two weeks earlier. The earlier uncharged break-in resulted in the theft of a camera that was subsequently found in defendant’s possession. Moreover, the intruder in the later uncharged break-in used a lighter to illuminate his path, and a lighter was stolen from one of the victims in the instant case.

The other-acts evidence also showed that two weeks after the charged offense, two other nearby houses were broken into through unlocked doors. Defendant was found shortly thereafter (during the ladder incident) with (1) a nearly full box of cigarettes similar to a box taken from one of the homes and (2) a pocket knife that could have been used to cut a screen door² and gain entry to the other residence.

We conclude that the other-acts evidence (aside from the evidence pertaining to the bicycle, as discussed *infra*) was properly allowed for the purpose of showing defendant’s plan or scheme. The close geographic and chronological proximity of the break-ins, in addition to the facts that all the break-ins occurred on hot nights through open or unlocked doors, showed substantial similarities between the uncharged acts and the charged act. The similarities between

² The screen door was latched from the inside but the main door was open.

the charged act and the uncharged acts were sufficient to allow the jury to infer that they were manifestations of a common plan, scheme, or system. *People v Dobek*, 274 Mich App 58, 90-91; 732 NW2d 546 (2007).

The evidence, viewed as a whole, was sufficient to establish defendant as the perpetrator of the uncharged home invasions based on the similarities and the temporal and spatial proximity of the acts, the relative rarity of home invasions in Manistee, and the various items stolen, used, and found in defendant's possession. Moreover, given the substantial probative value of the other-acts evidence and the instructions provided by the trial court, the evidence was admissible under the balancing test of MRE 403.

The parties agree that evidence regarding the bicycle incident should not have been admitted. However, we conclude that in light of the properly admitted evidence and the trial court's instructions to the jury regarding the proper consideration of the other-acts evidence, the admission of this evidence was not outcome-determinative. Thus, reversal is not warranted. A trial court's error in admitting evidence "is not a ground for reversal unless "after an examination of the entire cause, it shall affirmatively appear" that it is more probable than not that the error was outcome determinative.'" *People v Smith*, 243 Mich App 657, 680; 625 NW2d 46 (2001), quoting *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999), quoting MCL 769.26.

Affirmed.

/s/ Donald S. Owens
/s/ Michael J. Talbot
/s/ Patrick M. Meter