

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES LOUIS THELEN,

Defendant-Appellant.

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UNPUBLISHED

May 26, 2011

Nos. 296990; 297033

Ingham Circuit Court

LC Nos. 09-001057-FH;

09-001094-FH

Before: DONOFRIO, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

Defendant, James Louis Thelen, appeals as of right his jury trial convictions of third-degree fleeing and eluding, MCL 257.602a(3), and resisting and obstructing an officer, MCL 750.81d(1). Because the trial court did not abuse its discretion when it joined the two offenses for trial, and, sufficient evidence supported his conviction for third-degree fleeing and eluding, we affirm.

I

Defendant's third-degree fleeing and eluding conviction is the result of an incident that occurred on August 18, 2009. Officer Candace Hampton was dispatched to pick defendant up, but could not locate him at his address. Hampton noticed a maroon Pontiac Aztec, which is the vehicle defendant was known to drive, near his home at the intersection of Van Atta Road and Grand River Avenue. Hampton turned around and pursued the vehicle with her lights and siren activated. The Pontiac, however, continued to accelerate. Eventually, Hampton discontinued pursuit but kept traveling at a slower speed in the same direction as the Pontiac. At the first curve of the road, Hampton observed that the Pontiac was rolled over on its side. Hampton called for an ambulance and confirmed that defendant was the only person in the vehicle. Police arrested defendant and he was taken to Sparrow Hospital for treatment.

While at the hospital on the following day, uniformed officers guarded defendant because he was technically in the custody of Ingham County while being treated for his injuries. Officer Brian Sweet told defendant that he had to give Sweet the remote control because when he is on duty Sweet likes to have control over everything in the room. Defendant refused to give Sweet the remote and got upset when Sweet took it. After taking the remote, Sweet turned off the television and began working on paperwork when defendant threw a pop and struck Sweet. This

incident resulted in defendant's conviction for resisting and obstructing an officer on August 19, 2009.

The prosecutor originally charged defendant separately for third-degree fleeing and eluding, and, resisting and obstructing an officer. However, before trial the prosecutor moved to join the charges in one trial and the trial court granted the request. Defendant was convicted as charged and he now appeals as of right.

## II

On appeal, defendant first argues that the trial court abused its discretion when it consolidated the two charges for a single trial. A trial court's ultimate decision regarding whether to sever or join charges for trial is reviewed for an abuse of discretion. *People v Williams*, 483 Mich 226, 234 n 6; 769 NW2d 605 (2009). An abuse of discretion has occurred when the trial court's decision falls outside the range of principled outcomes. *People v Carnicom*, 272 Mich App 614, 616-617; 727 NW2d 399 (2006). Whether charges are related is a question of law this Court reviews de novo. *Williams*, 483 Mich at 231.

The prosecution moved the trial court for permissive joinder of defendant's charges pursuant to MCR 6.120(B), which provides that joinder is appropriate "if the offenses are related." MCR 6.120(B) provides in relevant part:

On its own initiative, the motion of a party, or the stipulation of all parties, except as provided in subrule (C), the court may join offenses charged in two or more informations or indictments against a single defendant, or sever offenses charged in a single information or indictment against a single defendant, when appropriate to promote fairness to the parties and a fair determination of the defendant's guilt or innocence of each offense.

(1) Joinder is appropriate if the offenses are related. For purposes of this rule, offenses are related if they are based on

(a) the same conduct or transaction, or

(b) a series of connected acts, or

(c) a series of acts constituting parts of a single scheme or plan.

(2) Other relevant factors include the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties' readiness for trial. [MCR 6.120(B).]

Court rules are interpreted using the same legal principles that govern the construction and application of statutes. *Williams*, 483 Mich at 232. "When construing a court rule, [the Court] begin[s] with its plain language; when that language is unambiguous, [the Court] must

enforce the meaning expressed, without further judicial construction or interpretation.” *Id.* In *Williams*, the Court found that the language of MCR 6.120 is unambiguous. *Id.*

#### A

With regard to the resisting and obstructing charge, the reason defendant was in the hospital was because he crashed his vehicle while disobeying police direction to stop his vehicle and instead defiantly fled from police. Defendant was under guard at the hospital as a result of the actions that gave rise to the fleeing and eluding charge. The officer defendant threw his pop at was only guarding defendant because defendant committed the offense of fleeing and eluding. Therefore, evidence of the fleeing and eluding charge would be admissible in the resisting and obstructing case to provide a full context of the case for the jury. *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996) (While “there are substantial limits on the admissibility of evidence concerning other bad acts,” MRE 404(b)(1), “it is essential that prosecutors and defendants be able to give the jury an intelligible presentation of the full context in which disputed events took place.”) Evidence of other criminal acts is admissible when “one incidentally involves the other or explains the circumstances of the crime.” *Id.* at 742. The “principle that the jury is entitled to hear the ‘complete story’ ordinarily supports the admission” of other-acts evidence when an event does not occur “singly and independently” from other events. *Id.* In this case, evidence regarding the fleeing and eluding offense was necessary to explain how the resisting and obstructing offense occurred.

#### B

With regard to the fleeing and eluding charge, evidence of the resisting and obstructing offense is also relevant and admissible in a trial for fleeing and eluding. Where evidence of other acts is relevant only because it tends to show that the defendant acted in conformity with his character, it is not admissible except as otherwise provided by MRE 404(b)(1) and MCL 768.27.<sup>1</sup> Where evidence of other acts is offered for another purpose, such as to prove motive, opportunity, intent, preparation, scheme, plan, or system, absence of mistake or accident, or some purpose other than character, it is admissible if the purpose for which it is offered is

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<sup>1</sup> MCL 768.27 provides:

In any criminal case where the defendant’s motive, intent, the absence of, mistake or accident on his part, or the defendant’s scheme, plan or system in doing an act, is material, any like acts or other acts of the defendant which may tend to show his motive, intent, the absence of, mistake or accident on his part, or the defendant’s scheme, plan or system in doing the act, in question, may be proved, whether they are contemporaneous with or prior or subsequent thereto; notwithstanding that such proof may show or tend to show the commission of another or prior or subsequent crime by the defendant.

material to the case, MRE 404(b)(1); MCL 768.27, and its probative value is not substantially outweighed by the danger of unfair prejudice under MRE 403.

The elements of fleeing and eluding were set forth in *People v Grayer*, 235 Mich App 737, 741; 599 NW2d 527 (1999):

(1) the law enforcement officer must have been in uniform and performing his lawful duties and his vehicle must have been adequately identified as a law enforcement vehicle, (2) the defendant must have been driving a motor vehicle, (3) the officer, with his hand, voice, siren, or emergency lights must have ordered the defendant to stop, (4) the defendant must have been aware that he had been ordered to stop, (5) the defendant must have refused to obey the order by trying to flee from the officer or avoid being caught, which conduct could be evidenced by speeding up his vehicle or turning off the vehicle's lights among other things, and (6) some portion of the violation must have taken place in an area where the speed limit was thirty-five miles an hour or less, or the defendant's conduct must have resulted in an accident or collision, or the defendant must have been previously convicted of certain prior violations of the law as listed in MCL 750.479a(3)(c). [*Grayer*, 235 Mich App at 741.]

Here, Officer Sweet told defendant that he had to give Sweet the remote control because when he is on duty Sweet likes to have control over everything in the room. Defendant refused to give Sweet the remote so Sweet had to take it from defendant. Defendant got upset and threw an object at Sweet. This evidence was clearly relevant to show a pattern of defendant's affirmative disregard of direct police instruction and defiance of police orders which goes directly to defendant's intent to commit fleeing and eluding. Defendant's pattern of defiant disregard for police instruction is clearly relevant and specifically implicates elements (4) and (5) of the fleeing and eluding charge.

Further, we see no reason why the evidence of throwing a pop would be unfairly prejudicial in the fleeing and eluding case. "[U]nfair prejudice refers to the tendency of the proposed evidence to adversely affect the objecting party's position by injecting considerations extraneous to the merits of the lawsuit, e.g., the jury's bias, sympathy, anger, or shock." *People v Goree*, 132 Mich App 693, 702-703; 349 NW2d 220 (1984). Evidence is unfairly prejudicial if there is a danger that marginally probative evidence will be given undue weight by the jury or cause the jury to decide the case on an improper basis such as emotion. *People v Ortiz*, 249 Mich App 297, 306; 642 NW2d 417 (2001); *People v Meadows*, 175 Mich App 355, 361; 437 NW2d 405 (1989). All evidence is generally prejudicial in a criminal trial; however, there is no indication on this record, a record containing a relatively simple fact pattern and straightforward evidence that the admission of other acts evidence would have been given undue weight.

## C

The rule permitting joinder states that consideration of other relevant factors is proper, and it lists "the timeliness of the motion, the drain on the parties' resources, the potential for confusion or prejudice stemming from either the number of charges or the complexity or nature of the evidence, the potential for harassment, the convenience of witnesses, and the parties'

readiness for trial” as the other relevant factors. MCR 6.120(B). These additional considerations absolutely support joinder of the charges. Regarding timeliness, the prosecution moved for joinder about a month before the trial. It would have been an additional drain on both parties’ resources to prepare for and show up for two separate jury trials. Further, there was little potential for confusion or prejudice stemming from the number of the charges or the complexity of the evidence. There were only two charges after the joinder, and the evidence regarding both offenses was very straightforward. It was certainly more convenient for the witnesses who may have had to testify during both trials to arrive for one day of trial rather than two separate trials. Finally, there is no claim by defendant that he was not prepared for a trial on both charges. Indeed, there was a substantial commonality of the evidence used to prove both cases and the two offenses occurred in close temporal proximity. Thus, we conclude that the trial court’s decision to join the cases was not an abuse of discretion.

### III

Defendant also argues that there was insufficient evidence to convict him of third-degree fleeing and eluding. When the sufficiency of the evidence is challenged the evidence is viewed in a light most favorable to the prosecution to determine whether a rational jury could find that each element of the crime was proved beyond a reasonable doubt. *People v Nowack*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). Our review of the record reveals that sufficient evidence exists on the record to enable the jury to find defendant guilty beyond a reasonable doubt of fleeing and eluding. We set out the elements of fleeing and eluding above in *Grayer*, 235 Mich App at 741.

Defendant specifically argues that there was insufficient evidence to prove the fourth and fifth elements of the crime. Regarding the fourth element, the officer pursuing defendant testified that defendant looked right at her when she passed him, that she was able to turn her vehicle around in a matter of seconds, and that she was only about ten car lengths behind defendant. The officer testified that she activated her sirens and lights when she was pursuing defendant. Another witness testified that he observed defendant’s vehicle and the police vehicle drive by him, and that the police vehicle was only a short distance behind defendant’s vehicle and the police vehicle was immediately visible after defendant’s vehicle. When viewed in a light most favorable to the prosecution, this testimony provides sufficient evidence to find that defendant was aware that he was ordered to stop. Circumstantial evidence and the reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime. *People v Gayheart*, 285 Mich App 202, 216; 776 NW2d 330 (2009). It is reasonable to assume that defendant would be aware that he was ordered to stop under the circumstances described by the witnesses.

Regarding the fifth element, the officer who was pursuing defendant testified that as soon as defendant passed her vehicle he sped up and continued speeding throughout the duration of the chase. She further testified that defendant began speeding after looking directly at the police vehicle. It is up to the finder of fact to make decisions about credibility of witnesses and the probative value of evidence. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). In this case it is not unreasonable for the finder of fact to conclude that excessive speeding of at least 70 miles per hour in a 35 mile per hour zone,

indicated that defendant was attempting to flee from the officer or to avoid being caught. Thus, there was sufficient evidence for to find defendant guilty beyond a reasonable doubt.

Affirmed.

/s/ Pat M. Donofrio

/s/ Stephen L. Borrello