

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SEMA’J RAMONE LAWSON,

Defendant-Appellant.

UNPUBLISHED

November 29, 2011

No. 299798

Muskegon Circuit Court

LC No. 09-057431-FC

Before: WILDER, P.J., and HOEKSTRA, and BORRELLO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of first-degree felony murder, MCL 750.316(1)(b). Defendant was sentenced as a habitual offender, second offense, MCL 769.12, to life in prison without parole for felony murder, to be served concurrently to another sentence from a separate case. For the reasons set forth in this opinion we affirm defendant’s convictions and sentence.

Early in the morning of January 8, 2009, the victim in this case, D’Andre Jordan was walking through a neighborhood when two men assaulted, robbed, and shot him with a handgun. Witnesses testified that one of the assailants wore a dark jacket, knit hat, and light blue jeans. They further testified that this assailant shot at a passing truck, and then threw a beer bottle into a nearby front yard before fleeing the scene. Jordan died from the gunshot wounds and police forensics determined that the same type of bullet the police found in Jordan’s body was also found in the truck at which one of the assailants shot.

When the police questioned defendant about the incident, defendant told the police that he was one of the assailants and that he stole Jordan’s cellular telephone. He also told the police that he threw a beer bottle into the yard. However, defendant said that the other suspect in the case, Rodreakes Fountain, shot Jordan. However, statements from witnesses who saw defendant testified that defendant was wearing a black jacket, knit hat, and light blue jeans about 3:00 a.m. that morning. A witness also testified that they observed defendant with what appeared to be blood on his light blue jeans shortly after the shooting. The gun used to kill D’Andre Jordan was never recovered.

Prior to trial, the prosecution moved to admit evidence under MRE 404(b) that defendant has shot Andrae Raglin on March 7, 2008. The prosecution argued that the evidence was relevant to show defendant’s intent, knowledge, and opportunity regarding the charged offense.

The trial court found that “[t]he Prosecutor has articulated a non-perpensity [sic] use of the evidence that I think is quite appropriate here,” and ruled the evidence admissible at trial. During defendant’s trial, the jury heard testimony that defendant drew a handgun and shot Raglin in the chest, nearly killing him. They were additionally told that the police never found the gun involved in the shooting of Raglin. During testimony and again after the parties’ closing statements, the trial court instructed the jury that it must limit its consideration of this evidence to the purposes allowed under MRE 404(b):

The Court: [E]ither side can introduce what we call Other Acts evidence to show that somebody had a plan or a scheme or a particular intent on the day of the crime that is at trial. We’re letting that in only for that purpose. . . . You can’t decide that it shows that Mr. Lawson’s a bad person. You cannot convict him here because you think he’s guilty of other bad things.

The Court: You’ve heard evidence that was introduced that the defendant committed improper acts for which he is not on trial. If you believe this evidence you must be very careful to consider it for certain purposes. You can only think about whether this evidence tends to show a) that the defendant specifically intended to shoot D’Andre Jordan; or b) that the defendant acted purposefully, that is not by accident or mistake or because he misjudged the situation; or c) that the defendant had the knowledge and opportunity to obtain and dispose of a firearm. You must not consider this evidence for any other purpose.

On appeal, defendant argues that the trial court abused its discretion by admitting evidence of an alleged prior bad act of defendant, contrary to MRE 404(b). Defendant asserts that the trial court should not have admitted evidence that defendant shot Raglin in 2008 because such evidence was not offered for a proper purpose, it was not relevant, and its prejudicial effect outweighed any possible probative value. Moreover, this admission was not harmless because there is a reasonable probability that the jury would have reached a different conclusion if it had not heard this evidence.

At the pretrial hearing, defendant argued that the 2008 evidence was more prejudicial than probative. Thus, defendant preserved this aspect of the issue for appeal. *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). However, defendant’s additional argument on appeal that the evidence was neither relevant nor offered for a proper purpose under MRE 404(b) is not preserved, as he did not raise this argument at the pretrial hearing or at trial. *Id.* This Court reviews defendant’s preserved claim for an abuse of discretion. “A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes.” *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008), lv den 483 Mich 856 (2009). This Court reviews defendant’s unpreserved claims for plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 752-753, 763; 597 NW2d 130 (1999).

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.

For evidence of prior bad acts to be admissible under MRE 404(b), the prosecution must prove that: (1) it is offering the evidence to prove something other than defendant's bad character or criminal propensity; (2) the evidence is relevant under MRE 402; and (3) the probative value of the evidence is not substantially outweighed by unfair prejudice under MRE 403. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). “[T]he trial court, upon request, may provide a limiting instruction . . .” *Id.* at 75.

In this case, we cannot find that the trial court committed plain error by finding that the prosecution met the first two prongs of the test for admissibility under MRE 404(b). The 2008 evidence was admissible for the relevant and proper purposes of proving defendant's intent and plan, scheme, and system. Proving defendant's intent was a proper purpose because defendant placed the element of intent at issue by his denial of guilt. *VanderVliet*, 444 Mich at 78. (See also, *People v Starr*, 457 Mich 490, 501; 577 NW2d 673 (1998), holding that a defendant's plea of not guilty places all the elements of the charge at issue). Additionally, we find that evidence of the 2008 shooting was logically relevant to defendant's intent regarding the charged 2009 shooting because the two shootings were “of the same general category.” *VanderVliet*, 444 Mich at 79-80. The 2008 evidence was also admissible for the proper and relevant purpose of showing defendant's plan, scheme, and system of shooting his victims and disposing of guns to avoid being connected to the shootings. Thus we concur with the trial court that the 2008 evidence was logically relevant to the charged offense because it supported an inference that defendant had a plan or system of disposing of guns, and it was used to refute defendant's theory that he was innocent because the police did not find him with the murder weapon. *People v Sabin (After Remand)*, 463 Mich 43, 63; 614 NW2d 888 (2000); *People v Starr*, 457 Mich at 500-502. There was no plain error in the trial court's decision that the evidence was offered for a proper purpose and was logically relevant. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Regarding the third prong of the test for admissibility under MRE 404(b), the trial court did not abuse its discretion by finding that the danger of unfair prejudice did not substantially outweigh the evidence's probative value. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). “All evidence offered by the parties is ‘prejudicial’ to some extent, but . . . [i]t is only when the probative value is *substantially outweighed* by the danger of unfair prejudice that evidence is excluded.” *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995) (emphasis in the original). “Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury.” *People v Ortiz*, 249 Mich App 297, 306; 642 NW2d 417 (2001), lv den 467 Mich 854 (2002). The trial court may try to limit the prejudicial effect by instructing the jury to consider the evidence only for its proper purpose. *VanderVliet*, 444 Mich at 75; *People v Watson*, 245 Mich App 572, 577; 629 NW2d 411 (2001), lv den 465 Mich 933 (2001), which is precisely what the trial court did in this case, thus minimizing the danger of unfair prejudice. *People v Crawford*, 458 Mich 376, 399 n 16; 582 NW2d 785 (1998). Review of the record in this case reveals that the trial court properly admitted the evidence and gave numerous limiting instructions to the jury as to the proper use of that evidence. Consequently, we find no error, and defendant has therefore failed to prove that

admission of the evidence constituted an abuse of discretion as required for reversal. *Lukity*, 460 Mich at 495-496.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Joel P. Hoekstra
/s/ Stephen L. Borrello