

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

TABITHA NSHOYA MAGOTI and CARE WITH  
LOVE,

Defendants-Appellants.

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UNPUBLISHED

September 30, 2003

No. 240488

Kalamazoo Circuit Court

LC Nos. 01-000566-FH;

01-000567-FH

Before: Smolenski, P.J., and Murphy and Wilder, JJ.

PER CURIAM.

Defendants appeal as of right their convictions of seven counts of uttering and publishing, MCL 750.249, entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Tabitha Nshoya Magoti was president of Care with Love (CWL), a staffing agency. CWL supplied persons who purportedly held competency evaluated nurse aide (CENA) certificates to nursing facilities. The Attorney General-Health Care Fraud Division charged each defendant with seven counts of uttering and publishing based on allegations that the CENA certificates furnished for seven persons sent to work at the Upjohn Nursing Home were not authentic.

Prior to trial the prosecution filed a notice of intent to introduce other acts evidence pursuant to MRE 404(b). The prosecution sought to introduce evidence that defendants also submitted false tuberculosis (TB) test results for persons sent to work at nursing facilities, including the Upjohn facility. The prosecution asserted that the other acts evidence went to defendants' plan or scheme to send unqualified persons to work at nursing facilities in return for payment for placement services. Defendants objected on the ground that no evidence showed that they produced the false results. The trial court held that the evidence was admissible on the ground that it showed a common plan or scheme.

Elizabeth Scott, the assistant nursing director at the Upjohn facility, testified that she became concerned when she learned that defendants' employees' CENA certificates and health certificates had expired. Scott stated that one of defendants' employees told her that the CENA certificates and TB test results provided by defendants were not authentic. Scott contacted the Chauncey Group, a company that tests and certifies persons as CENAs, and was told that the

Chauncey Group had no record of certifying defendants' employees. Scott checked the chest x-rays provided by some of defendants' employees as part of the TB test results, and found that in at least two cases the same x-ray was used.

Gail Koeppe-Hall, a representative of the Chauncey Group, testified that the Chauncey Group contracted with the State of Michigan to provide testing and training for persons wishing to become CENAs. Koeppe-Hall testified that she compared the CENA certificates furnished by defendants with records kept by the Chauncey Group, and concluded that the Chauncey Group had not certified defendants' employees as CENAs.

Two of the CENA certificates provided by defendants were for Josephat Sikwata and Gene Nteziyaremye. Sikwata and Nteziyaremye testified that they were not certified as CENAs.

Rae Ramsdell of the Department of Consumer and Industry Services testified that defendants were responsible for verifying the credentials of employees sent to nursing facilities. Ramsdell stated that the Chauncey Group provided verification on request.

Margaret Edwards, a former special agent investigator for the Health Care Fraud Division, testified that she began her investigation after Elizabeth Scott discovered discrepancies in the credentials of some employees provided by defendants. Edwards contacted the Chauncey Group and learned that the seven individuals named in the complaints against defendants were not certified as CENAs by Chauncey. She also discovered that four employees did not provide proper TB test results. Over defendants' objection, Edwards was allowed to testify that in her opinion the CENA certificates defendants provided to the Upjohn facility were not authentic.

The jury found defendants guilty on all counts. The trial court sentenced Tabitha Magoti to eighteen months' probation, and sentenced CWL to pay court costs in the amount of \$350.

Defendants argue that the trial court abused its discretion by admitting other acts evidence. We disagree. Evidence of other crimes, wrongs, or acts is inadmissible to prove the character of a person in order to show that he acted in conformity with it, but may be admissible for other purposes, such as to show proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident. The other crimes, wrongs, or acts may be contemporaneous with or prior to or subsequent to the conduct at issue. MRE 404(b)(1). To be admissible, other acts evidence must be offered for a proper purpose, must be relevant, and its probative value must not be substantially outweighed by its potential for unfair prejudice. A proper purpose is one other than establishing the defendant's character to show his propensity to commit the offense. *People v Starr*, 457 Mich 490, 496; 577 NW2d 673 (1998).

Evidence of misconduct similar to that charged is logically relevant to show that the charged acts occurred if the charged acts and the other acts are sufficiently similar to support an inference that they are the manifestations of a common plan, scheme, or design. The charged acts and the other acts need not be parts of a single continuing plot. General similarity between the charged acts and the other acts does not, in and of itself, establish a plan, scheme, or design. There must be such a concurrence of common features so that the charged acts and the other acts are logically seen as part of a general plan, scheme, or design. *People v Sabin (After Remand)*, 463 Mich 43, 63-66; 614 NW2d 888 (2000).

The admissibility of other acts evidence is within the discretion of the trial court. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). A preserved nonconstitutional error is presumed to be harmless. The defendant bears the burden of showing that the error resulted in a miscarriage of justice. The error justifies reversal if it is more probable than not that it affected the outcome of the case. *People v Lukity*, 460 Mich 484, 493-496; 596 NW2d 607 (1999); *People v Knapp*, 244 Mich App 361, 378; 624 NW2d 227 (2001).

The elements of uttering and publishing are: (1) the defendant's knowledge that the instrument was false; (2) an intent to defraud; and (3) presenting the forged instrument for payment. A defendant's intent can be proved by circumstantial evidence. *People v Hawkins*, 245 Mich App 439, 457-458; 628 NW2d 105 (2001).

Contrary to defendants' assertion, relevant evidence existed from which it could be inferred that defendants knew that the TB test results were not authentic. Elizabeth Scott testified that one of defendants' employees told her that defendants prepared false TB test results. The prosecution's theory was that defendants perpetrated a scheme to supply unqualified individuals to nursing facilities in return for payment of an agency fee. The persons supplied by defendants could not be hired without CENA certificates and negative TB test results. The evidence that defendants submitted inauthentic TB test results was offered for a proper purpose, and was relevant to show defendants' scheme to provide unqualified employees to facilities in return for payment. MRE 401; *Crawford, supra*, 388-390. The evidence was prejudicial; however, that prejudice was inherent in its relevance. *People v Magyar*, 250 Mich App 408, 416; 648 NW2d 215 (2002). The other acts were sufficiently similar to the charged acts to allow them to be seen as part of the same general plan or scheme. *Sabin, supra*. No abuse of discretion occurred. *Crawford, supra*, 383.

Defendants also argue that the trial court abused its discretion by allowing Margaret Edwards to testify that in her opinion the CENA certificates provided to the Upjohn facility were not authentic. We disagree. A lay witness may testify to his opinion if the opinion is rationally based on the perception of the witness and is helpful to a clear understanding of a fact in issue. MRE 701. We review a trial court's determination of an evidentiary issue for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995).

Even assuming arguendo that Edwards' opinion testimony was improper under MRE 701, the error was harmless. The evidence presented via the testimony of Elizabeth Scott, Gail Koeppe-Hall, Josephat Sikwata, and Gene Nteziyaremye established the elements of uttering and publishing in that it showed that defendants knowingly provided falsified CENA certificates and, in some cases, TB test results, in order to cause the Upjohn facility to hire their employees and pay an agency fee. MCL 750.249. Defendants have not shown that it is more probable than not that the error, if any, affected the outcome of the case. *Lukity, supra*. Reversal is not required on this issue. MCL 729.26.

Affirmed.

/s/ Michael R. Smolenski  
/s/ William B. Murphy  
/s/ Kurtis T. Wilder

