

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNNY RENO HUDSON,

Defendant-Appellant.

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UNPUBLISHED

June 20, 2006

No. 259902

Oakland Circuit Court

LC No. 2004-197825-FC

Before: Kelly, P.J., and Markey and Meter, JJ.

PER CURIAM.

Defendant was convicted by a jury of kidnapping, MCL 750.349,<sup>1</sup> assault with intent to do great bodily harm, MCL 750.84, and accepting the earnings of a prostitute, MCL 750.457. He was sentenced as a second-offense habitual offender, MCL 769.10, to prison terms of twenty-five to fifty years for the kidnapping conviction, five to fifteen years for the assault conviction, and ten to thirty years for the prostitution-related conviction. He appeals as of right. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court erred in admitting other-acts evidence (consisting of testimony by defendant's former girlfriend) under MRE 404(b)(1). A trial court's ruling regarding the admission of evidence is reviewed for an abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). A preliminary question concerning whether evidence is admissible under a particular rule of evidence is reviewed de novo. *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001).

Under MRE 404(b)(1), evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person to show action in conformity therewith. Thus, if the sole purpose in offering the evidence is to show the defendant's propensity for particular conduct based on his character as inferred from other wrongful conduct, it is not admissible. *People v Gimotty*, 216 Mich App 254, 259; 549 NW2d 39 (1996). It may be admissible, however, for another purpose, "such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an

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<sup>1</sup> This statute was amended in 2006 but the amendment does not apply to defendant's crime, which was committed in 2004.

act, knowledge, identity, or absence of mistake or accident” if that purpose is material. MRE 404(b)(1).

The trial court admitted the evidence to show a scheme, plan, or system in doing an act. “[E]vidence of other instances of . . . misconduct that establish a scheme, plan, or system may be material in the sense that the evidence proves that the charged act was committed.” *People v Sabin (After Remand)*, 463 Mich 43, 62; 614 NW2d 888 (2000). The prior acts are logically relevant for this purpose “where the uncharged misconduct and the charged offense are sufficiently similar to support an inference that they are manifestations of a common plan, scheme, or system.” *Id.* at 63. “[D]istinctive and unusual features are not required to establish the existence of a common design or plan. The evidence of uncharged acts needs only to support the inference that the defendant employed the common plan in committing the charged offense.” *Hine, supra* at 252-253.

As noted, the evidence at issue consisted of testimony from defendant’s former girlfriend. Her testimony showed in general that defendant used physical violence and restraint against her will when she opposed or challenged him. This evidence supported an inference that defendant would resort to physical violence if the victim opposed or challenged him and thus tended to show that the victim did not willingly go with him to his sister’s house or willingly stay there.<sup>2</sup> Therefore, the evidence was admitted for a proper purpose. Further, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. *People v Vasher*, 449 Mich 494, 501; 537 NW2d 168 (1995); *People v Meadows*, 175 Mich App 355, 361; 437 NW2d 405 (1989). The trial court did not abuse its discretion in admitting the evidence.

Defendant next contends that the scoring of the sentencing guidelines should have been resolved by the trier of fact in accordance with *Blakely v Washington*, 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004). This issue was not raised below and, therefore, has not been preserved for appeal. Thus, in order to obtain relief on appeal, defendant must demonstrate the existence of a plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Our Supreme Court and this Court have concluded that *Blakely* does not apply to sentences imposed in Michigan. *People v Claypool*, 470 Mich 715, 730-731 n 14; 684 NW2d 278 (2004); *People v Endres*, 269 Mich App 414, 423; 711 NW2d 398 (2006). See also *People v James*, 267 Mich App 675, 681; 705 NW2d 724 (2005), and *People v Wilson*, 265 Mich App 386, 399; 695 NW2d 351 (2005). Therefore, defendant has not shown plain error.

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<sup>2</sup> The victim testified that that defendant beat her, fractured her jaw, and threatened her with additional violence during the kidnapping episode. The other-acts evidence lent credibility to this testimony and tended to disprove defendant’s theory that the victim voluntarily stayed with defendant and “had ample opportunity to get away . . . .”

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Patrick M. Meter