

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

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY PAUL BRICKER,

Defendant-Appellant.

---

UNPUBLISHED

November 18, 2008

No. 277716

Delta Circuit Court

LC No. 06-007679-FH

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

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree home invasion, MCL 750.110(a)(3), and sentenced as an habitual offender, fourth offense, MCL 769.12, to a prison term of 5 to 30 years. He appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant was convicted of breaking into a residential home with the intent to commit larceny. At trial, defendant did not deny that the police discovered him inside the home, but claimed that he did not enter the home with the intent to commit a larceny. Rather, defendant told the police that he wanted to ask the homeowner about mowing the lawn or raking leaves, and was inside for less than five minutes. However, the prosecution presented testimony that defendant had been inside the home for more than 15 minutes after the police were called, and that the lawn had been raked that morning. The prosecution also presented evidence that defendant had entered two other homes in 1999 and took items from inside.

Defendant argues that the evidence of his two prior thefts in 1999 was improperly admitted under MRE 404(b) and also was in violation of his privilege against self-incrimination.

This Court reviews a trial court's decision regarding the admissibility of other-acts evidence for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). A court abuses its discretion when it chooses an outcome that lies outside the range of reasonable and principled outcomes. *People v Orr*, 275 Mich App 587, 588-589; 739 NW2d 385 (2007).

MRE 404(b)(1) precludes the admission of evidence of other crimes, wrongs, or acts "to prove the character of a person in order to show action in conformity therewith," but allows such evidence to be admitted for other purposes, including "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 . . . .” To be admissible under MRE 404(b)(1), other acts evidence generally must satisfy three requirements: (1) it must be offered for a proper purpose, (2) it must be relevant, having components of materiality and probative value, and (3) its probative value must not be substantially outweighed by its potential for unfair prejudice. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004); *Crawford, supra*, pp 388-389.

The prosecution read into the record excerpts from the transcript of defendant’s guilty pleas in 1999. The jury was not told that defendant had been convicted, but the court noted that the excerpt was from “proceedings held in 1999 in this courtroom.” In the colloquy with respect to the first incident, defendant admitted that in March 1999, after he had had “a few too many” beers, he went up to knock on the door of a home “because they were supposed to have a trampoline for sale.” He saw a purse sitting on a chair inside. He opened the door, reached in, grabbed the purse, and “took off” with it. Defendant admitted that he entered the home with the intent to take the purse. Regarding the second incident, in April 1999, defendant stated that he had a “few too many” and was walking toward a friend’s house. He came up to a house that he initially thought was his friend’s, but while standing outside, realized that it was not. He saw items inside and decided to steal them. He opened the unlocked door, went inside, and stole some computer games.

The evidence was offered to establish defendant’s larcenous intent, a proper non-character purpose. Defendant’s intent was material because defendant’s intent to commit a larceny, an essential element of second-degree home invasion, was the principal issue at trial. *People v Nutt*, 469 Mich 565, 593; 677 NW2d 1 (2004). The evidence was probative of defendant’s intent, not through the forbidden intermediate inference to defendant’s subjective personal character, but rather on “the premise that ‘the more often the defendant commits an actus reus, the less is the likelihood that the defendant acted accidentally or innocently.’” *Crawford, supra*, p 393, quoting Imwinkelried, *Uncharged Misconduct Evidence*, § 3:11, p 45. Although the evidence was damaging, the probative value was not substantially outweighed by the danger of unfair prejudice, particularly in light of the trial court’s limiting instructions. *Crawford, supra*, p 398; *People v McGhee*, 268 Mich App 600, 614; 709 NW2d 595 (2005). The admission of the evidence was not an abuse of discretion.

Defendant also challenges the method by which the evidence of his prior acts was admitted, i.e., the reading of his testimony at the guilty plea proceeding. He argues that the introduction of his incriminating statements from the plea proceeding violated his Fifth Amendment right against self-incrimination and denied him “his right to have the credibility of ‘similar acts’ witnesses determined by the jury.” We conclude that defendant waived review of this issue by affirmatively agreeing to this procedure at trial. Although defendant preserved his objection to the admissibility of the evidence, once the trial court ruled that the evidence was admissible, defense counsel agreed that introduction of the evidence through the plea transcript “seems to be the appropriate way to do it in my mind.” “When a court proceeds in a manner acceptable to all parties, it is not resolving a disputed point and thus does not ordinarily render a ruling susceptible to reversal.” *People v Riley*, 465 Mich 442, 449; 636 NW2d 514 (2001). Therefore, any error was extinguished. *Id.*

Lastly, defendant argues that there was insufficient evidence of his intent to commit a larceny to support his conviction of second-degree home invasion.

When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

The elements of second-degree home invasion are (1) entry of a dwelling, either by a breaking or without permission, (2) with the intent to commit a felony or a larceny in the dwelling. *Nutt, supra*, p 593. Intent to commit a larceny cannot be presumed solely from proof that the defendant entered a dwelling, but can be inferred from the nature, time, and place of the defendant's action before and during the crime. *People v Uhl*, 169 Mich App 217, 220; 425 NW2d 519 (1988).

The evidence showed that defendant knocked on the front door, walked to the front public sidewalk, hesitated, then walked down the sidewalk to the backyard before entering the home through the back door. The homeowner had left the door unlocked, but the neighbors and then the police discovered that it was locked, suggesting that defendant locked it while inside. Defendant was observed going into the backyard approximately seven minutes before a neighbor called the police and was inside for more than 15 minutes after that call. Given the length of time that defendant was in the home, his explanation to police that he sought to perform yard work for the homeowners, was not credible. In the basement, a door to a cupboard was open. A nail that was used as a latch to hold it shut was out of place and was later discovered under a chest. A door to the owner's paint room, which was always kept closed, was open more than half way. The prosecution also presented evidence that defendant had previously entered two homes in 1999 with a larcenous intent. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable the jury to reasonably infer beyond a reasonable doubt that, after taking steps to ascertain that the homeowners were not home, defendant entered the home through the back door, intending to commit a larceny.

Affirmed.

/s/ William B. Murphy  
/s/ David H. Sawyer  
/s/ Michael R. Smolenski