STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

RONALD RICE,

Defendant-Appellee.

UNPUBLISHED
December 4, 2008

No. 285904
Oakland Circuit Court
LC No. 08-219968-FC

Before: Gleicher, P.J., and Kelly and Murray, JJ.

MURRAY, J. (*concurring*).

I concur in the majority's resolution of defendant's appeal, and with the rationale employed in reaching that resolution, but with one minor exception. In my view, the trial court's decision would have been an abuse of discretion had it been based solely on the fact that the other acts evidence occurred subsequent to the charged transaction. MRE 404(b)(1) clearly allows for use of prior acts that occurred "subsequent to the conduct at issue in this case." However, because the trial court's conclusion that the evidence was more prejudicial than probative was not outside the principled range of outcomes, *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003), and because the circumstances surrounding admission of these precluded acts could change and be revisited during trial, I concur with the conclusion that the trial court's evidentiary decision should be affirmed.

/s/ Christopher M. Murray