

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
September 25, 2012

v

KORDERO COLUMBUS WILLIAMS,

Defendant-Appellant.

No. 304158
Wayne Circuit Court
LC No. 10-012251-FH

Before: JANSEN, P.J., and BORRELLO and BECKERING, JJ.

PER CURIAM.

Defendant Kordero Columbus Williams appeals as of right his jury-trial convictions of two counts of first-degree home invasion, MCL 750.110a(2). The trial court sentenced defendant as a second habitual offender, MCL 769.10, to concurrent sentences of 8 to 30 years' imprisonment for each home-invasion conviction. We affirm.

The evidence at trial showed that on the morning of September 10, 2010, defendant entered Lorraine Suber's apartment. Suber's 15-year-old son, Keyontay, awoke to see defendant in his bedroom carrying his television. Keyontay jumped up and asked defendant what he was doing. Defendant stated, "I'm just playing," dropped the television, and ran out of the apartment. On October 18, 2010, Suber discovered that several items were missing from inside her apartment, including a laptop, a DVD player, and a set of keys. Her car, which had been parked in front of the apartment, was also missing. Later that evening, the police searched defendant's living quarters and recovered several items that Suber identified as hers, including the laptop, DVD player, a Wii game system, and a set of keys that had disappeared from her home during the summer. The trial court permitted the prosecution to admit, pursuant to MRE 404(b), other-acts evidence of defendant's involvement in and conviction for a December 15, 2009, home invasion, wherein defendant admitted to having broken into a home with the intent to steal multiple televisions and various electronic items.

Defendant argues that the trial court reversibly erred in admitting the other-acts evidence. Defendant claims that the prosecutor's alleged proper purpose of showing intent and a common plan or scheme as permitted by MRE 404(b) was not satisfied because there was no common

plan or scheme.¹ According to defendant, other than the similar nature of the items intended to be stolen, the methods of operation were “quite different.” This case involved nonforcible entry into the home, potentially by way of keys taken from the victims, and theft while one or more of the victims were sleeping; in contrast, the 2009 incident involved forcible entry while the occupants were away.

We review for an abuse of discretion a trial court’s decision to admit or exclude evidence. *People v Gursky*, 486 Mich 596, 606; 786 NW2d 579 (2010). “However, decisions regarding the admission of evidence frequently involve preliminary questions of law, such as whether a rule of evidence or statute precludes admitting” the evidence. *Id.* We review de novo questions of law. *Id.* “Accordingly, when such preliminary questions of law are at issue . . . it is an abuse of discretion to admit evidence that is inadmissible as a matter of law.” *Id.* (quotation omitted).

Generally, all relevant evidence is admissible, and irrelevant evidence is not admissible. MRE 402. However, “[w]here the only relevance of the proposed evidence is to show the defendant’s character or the defendant’s propensity to commit crime, the evidence must be excluded.” *People v Knox*, 469 Mich 502, 510; 674 NW2d 366 (2004); see also MRE 404(b)(1). MRE 404(b)(1) states the following:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted 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 crime, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

To be admissible under MRE 404(b), evidence of other crimes, wrongs, or acts must be (1) offered for a proper purpose under Rule 404(b) and (2) relevant under Rule 402 as enforced through Rule 104(b) and, additionally, (3) the probative value of the evidence cannot be substantially outweighed by the danger unfair prejudice. *People v VanderVliet*, 444 Mich 52, 55, 74; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). Once the evidence is admissible, the trial court may, upon request, provide a limiting instruction to the jury. *Id.*

Here, the prosecutor claims that the other-acts evidence was offered for the proper purposes of showing defendant’s intent and a common scheme or plan. These are proper purposes under MRE 404(b). With respect to whether the evidence was actually relevant to prove defendant’s intent, defendant claimed that he did not commit the crimes charged. As such, a fact at issue included whether he had the intent to commit a larceny. Defendant’s admission that he intended to steal televisions during the 2009 home invasion tends to rebut his statement to Keyontay on September 10, 2010, that he was “just playing” when he was caught holding a television in Keyontay’s bedroom. As such, it had a tendency to make the existence of a fact that was of consequence to the determination of the action, i.e., whether defendant intended to

¹ Notably, defendant does not argue that the evidence failed to show intent.

commit a larceny, more or less probable than it would have been without the evidence. See MRE 401. Whether the evidence was relevant to prove a common plan or scheme is a closer question. The prosecutor argued that defendant had a common scheme or plan to steal electronics; however, people who break and enter with the intent to commit a larceny commonly steal the most valuable items in the home, which typically include electronics. As such, the two events are not particularly illustrative of a common plan or scheme. Nevertheless, merely because the evidence is inadmissible for one purpose does not render the evidence inadmissible for other purposes. *People v Sabin*, 463 Mich 43, 56; 614 NW2d 888 (2000).

Although defendant fails to directly address whether the evidence should have been excluded under MRE 403, we agree with the prosecutor that the evidence was not unfairly prejudicial. Proffered 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 Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998). No such danger exists here because the evidence was not marginally probative. Moreover, the other-acts evidence was not so inflammatory as to inflame the jury’s passions, leading to the allocation of undue weight. Furthermore, the trial court provided a limiting instruction twice: once immediately following admission of the other-acts evidence and again at the close of proofs. This helped eliminate the possibility that the jury would use the evidence for an improper purpose, and it is presumed that the jury followed its instructions. See *People v Armstrong*, 490 Mich 281, 294; 806 NW2d 676 (2011). Accordingly, the trial court did not abuse its discretion by admitting the other-acts evidence under MRE 404(b).

Even assuming that the trial court erred in admitting the evidence, defendant is not entitled to relief. A nonconstitutional evidentiary error does not merit reversal unless, “after an examination of the entire cause, it shall affirmatively appear that it is more probable than not that the error was outcome determinative.” *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999) (quotations omitted). Here, testimony revealed that defendant was not invited into Suber’s apartment but, nevertheless, was caught in her apartment holding a television. Even if one were to question Keyontay’s credibility, as defendant did at trial, a search of defendant’s living quarters revealed that he possessed several of Suber’s belongings, most notably her apartment keys. Defendant has failed to establish that it is more probable than not that admission of the other-acts evidence was outcome determinative.

Affirmed.

/s/ Kathleen Jansen
/s/ Stephen L. Borrello
/s/ Jane M. Beckering