

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

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
January 2, 2014

v

NATHANIEL SINCLAIR HOARD,  
  
Defendant-Appellant.

No. 309458  
Kalamazoo Circuit Court  
LC No. 2011-001077-FC

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Before: WHITBECK, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

Pramote Waramit tried to impress Shannon Allen, a prostitute, with his stash of \$10,000 in cash. Allen told defendant Nathaniel Hoard that Waramit planned to take the cash to Thailand the next day. She shared the same information with her boyfriend, Courtney Wadley. That evening, two men entered Waramit's apartment. One pointed a silver-barreled revolver at Waramit's cheek while the other ransacked Waramit's apartment. Both assailants repeatedly demanded that Waramit produce the \$10,000. Waramit claimed he did not have the money and the men were unable to find it. They took Waramit's wallet and gold jewelry instead.

Waramit told the police that only Allen knew about the \$10,000. After her arrest, Allen divulged that Hoard and Wadley had committed the robbery. Wadley remains a fugitive. Allen's testimony helped to convict Hoard, who contends that the introduction of several items of inadmissible evidence tainted his trial. We find no prejudicial error and affirm.

**I. BACKGROUND**

The prosecution built its case against Hoard on Allen's testimony and on Hoard's subsequent sale of Waramit's jewelry. After Allen confessed her role in precipitating the robbery, the police executed a search warrant at her apartment. They found Waramit's keys and wallet. A search of Hoard's apartment yielded neither Hoard nor any evidence linking him to the crime. Hoard was later arrested in Louisiana for possession of marijuana and extradited to Michigan for trial.

Waramit identified Wadley as the robber who held the handgun, but claimed he did not see the second assailant's face. Hoard's defense focused on discrediting Allen and highlighting Waramit's inability to identify Hoard. A defense witness claimed that he had received Waramit's jewelry from "a female" for \$20 and sold it to Hoard for \$40. Hoard testified that

although he knew Allen and Wadley, he was not involved in the robbery and had traveled to Louisiana as part of a planned musical tour.

The jury evidently believed Allen, and convicted Hoard of armed robbery, MCL 750.529, and receiving and concealing stolen property valued between \$1,000 and \$20,000, MCL 750.535(3)(a). Hoard's appellate counsel now raises a plethora of evidentiary challenges to his conviction and asserts that trial counsel performed ineffectively by failing to raise appropriate objections. Hoard's Standard 4 brief<sup>1</sup> sets forth due process and Sixth Amendment claims.

## II. EVIDENTIARY ISSUES

Hoard argues that the admission of seven items of "bad acts" evidence denied him a fair trial. MRE 404(b) prohibits using evidence of "other crimes, wrongs, or acts" to prove a person's character, but allows the evidence "for other purposes," such as to show motive, intent, preparation, plan, knowledge or identity. While Hoard's trial counsel objected to some of the "bad acts" evidence, she raised only hearsay grounds. Because counsel failed to preserve Hoard's current evidentiary arguments, Hoard may prevail only if he demonstrates that admission of the evidence qualified as plain error. See *Wolford v Duncan*, 279 Mich App 631, 637-638; 760 NW2d 253 (2008) (holding that an objection at trial on a different ground than that raised on appeal does not preserve the challenge for our review). To satisfy this exacting standard, Hoard must first demonstrate a clear or obvious violation of a legal rule that affected his substantial rights and altered the outcome of the trial. Hoard must further persuade us that the error or errors "resulted in the conviction of an actually innocent defendant" or "seriously affected the fairness, integrity or public reputation of judicial proceedings . . ." *People v Shafier*, 483 Mich 205, 219-220; 768 NW2d 305 (2009) (quotation marks and citation omitted).

Hoard cannot meet this test. Most of the evidence that Hoard describes as inadmissible under MRE 404(b) was properly introduced for a noncharacter purpose. The improper admission of two pieces of evidence does not rise to the level of plain error. We address each evidentiary item individually.

### A. The Previous Robberies

Hoard first challenges the admission of Allen's testimony that he and Wadley had participated in other robberies. That evidence was properly admitted because it related to an issue other than character; it explained why Allen told Hoard and Wadley about Waramit's \$10,000. Allen coveted the cash. She engaged the services of the two people she knew who could deliver it. The evidence was relevant background information that explained the full context of the disputed events. Accordingly, its admission did not violate MRE 404(b).

Allen's direct examination commenced with her admission to having pleaded guilty to "attempt armed robbery" for her role in setting up the invasion of Waramit's apartment. Allen's testimony continued:

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<sup>1</sup> See Administrative Order 2004-6, Standard 4.

Q. With regards to what happened to Mr. Waramit on June 1<sup>st</sup>, can you tell the jury why you pled guilty or what involvement did you have with regards to this case?

A. Telling both Defendants in the case, Nathan Hoard and Courtney Wadley, that I had seen \$10,000 and that I know they would go get it.

\* \* \*

Q. When you told him that information, what was your intent?

A. Knowing that he would probably go get the money.

\* \* \*

Q. Ms. Allen, how is it that you know the Defendant would try and get the money after you told him about it?

A. Because Mr. Hoard and Mr. Wadley had did previous armed robberies that I knew of.

Q. That you knew of?

A. Yes.

Q. Did you personally participate in these armed robberies?

A. No, I did not.

Q. How is it that you knew of these prior armed robberies?

A. Mr. Wadley had told me about them.<sup>[2]</sup>

Hoard contends that evidence of his involvement in other robberies created unfair prejudice by “smearing him as a career criminal and dangerous individual” contrary to MRE 404(b). In *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978), the Supreme Court explained as follows the reason that evidence intertwined with the charged offense does not offend MRE 404(b):

It is the nature of things that an event often does not occur singly and independently, isolated from all others, but, instead, is connected with some antecedent event from which the fact or event in question follows as an effect from a cause. When such is the case and the antecedent event incidentally

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<sup>2</sup> Hoard’s counsel raised hearsay objections to the quoted testimony which the trial court overruled. Hoard has not challenged these rulings.

involves the commission of another crime, the principle that the jury is entitled to hear the “complete story” ordinarily supports the admission of such evidence.

Alternatively stated, evidence of criminal acts that are “so blended or connected with the crime” that proof of one “explains the circumstances of the crime” is not objectionable. *Id.* (quotation marks and citation omitted).

Allen’s testimony concerning “previous armed robberies” explained the genesis of the charged offense. Allen knew that if she told Hoard and Wadley about the \$10,000 and Waramit’s imminent departure, likely they would seize the moment to steal the cash. Evidence that Hoard and Wadley had conducted other armed robberies lent Allen’s testimony “narrative integrity.” See *Old Chief v United States*, 519 US 172, 183; 117 S Ct 644; 136 L Ed 2d 574 (1997).

Proper background evidence has a causal, temporal or spatial connection with the charged offense. Typically, such evidence is a prelude to the charged offense, is directly probative of the charged offense, arises from the same events as the charged offense, forms an integral part of a witness’s testimony, or completes the story of the charged offense. [*United States v Hardy*, 228 F3d 745, 748 (CA 6 2000).]

As described in *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996): “[I]t is essential that prosecutors and defendants be able to give the jury an intelligible presentation of the full context in which disputed events took place.”

Allen’s account of her reason for sharing the information with Hoard and Wadley gave context and coherence to her testimony. Accordingly, this evidence did not contravene MRE 404(b), and its admission did not constitute plain error.

#### B. The Silver Handgun and the Sexual Assault

Next, Hoard asserts that Allen’s testimony concerning Hoard’s possession of a silver handgun during an attempted sexual assault violated MRE 404(b). The prosecutor elicited testimony describing the attempted assault to connect Hoard with the weapon used in the Waramit robbery. Because the evidence addressed an issue other than character, it was properly admitted.

Allen testified that she told Hoard about Waramit’s money “to get in better relations” because the two “weren’t on good terms before that.” The testimony continued:

*Q.* Why were you not on good terms before that?

*A.* Because he had come to my house one night to drop my boyfriend at the time off and he had come in my room and pulled my blankets off of me and tried to have sexual relations. I told him I didn’t want to and I called him a bitch and he got very upset and put a gun to me.

*Q.* So the Defendant put a gun to your head?

A. Not to my head, to my stomach.

Q. To your stomach. So the defendant actually pointed a gun at you?

A. Yes, he did.

\* \* \*

Q. . . . How close in proximity as far as time-wise was this to June 1<sup>st</sup>?

A. A couple months.

Q. Do you recall what that gun looked like?

A. It was a silver gun. I don't know too much about guns but it was a silver gun and it had a black piece on the handle.

Q. Okay. So a silver barrel with a black handle?

A. Yeah.

Hoard argues that the cited testimony added nothing more to the trial than character evidence demonstrating his propensity to commit violent acts. However, Hoard's possession of a silver-barreled handgun "a couple months" before Waramit's robbery constituted relevant and admissible evidence linking Hoard to the charged offense. In *People v Hall*, 433 Mich 573, 575; 447 NW2d 580 (1989), the Supreme Court upheld the admission of evidence tying the defendant to a shotgun used in an armed robbery of a videotape rental store. The shotgun was found seven months after the robbery, in his parked car outside a dry cleaning establishment. *Id.* at 578. Evidence of defendant's later possession of the gun was admissible, the Supreme Court reasoned, because it tended to establish the defendant's identity as a participant in the earlier video store robbery:

We hold that, as direct physical evidence of the commission of the armed robbery, the shotgun was properly admitted notwithstanding the fact that mere possession of it was a distinct criminal offense. We also hold that the testimony of the various witnesses to the circumstances surrounding the defendant's arrest was admissible to establish the defendant's possession and control of both the shotgun and a vehicle similar to the one used in the charged robbery. In both instances, admissibility is governed by MRE 401 and not, as defendant claims, by MRE 404(b). [*Id.* at 575.]

In this case, Hoard disputed that he played any part in robbing Waramit. That Hoard owned a gun similar to the gun used in the robbery tended to prove Hoard's identity as one of the robbers. In other words, Hoard's possession of a silver-barreled handgun supplied direct evidence tying Hoard to the Waramit robbery – an ultimate fact. See *id.* at 580-581. In contrast, evidence admitted under MRE 404(b) inferentially connects a defendant and an intermediate fact, such as motive, opportunity, plan or scheme. See *People v Vandervliet*, 444 Mich 52, 64; 508 NW2d 114 (1993).

The circumstances under which the gun evidence emerged – an attempted sexual assault – were highly prejudicial. Had counsel challenged the evidence related to the alleged assault, perhaps that part of the story could have been redacted. But we find no clear error in admission of the complete tale, as it provided context to Allen’s knowledge that Hoard possessed a certain weapon, and illuminated a facet of their relationship that influenced Allen’s decision to tell Hoard about the money.

#### C. Prison

Hoard next calls our attention to a snippet of Allen’s testimony in which she admitted to having told a detective that she was afraid because “one of the individuals” she had accused of the robbery “had been in prison.” We conclude that this testimony was simply too vague and abbreviated to have prejudiced Hoard.

The detective to whom Allen confessed her involvement in the crime testified more directly, stating that Allen “advised us that [Hoard] . . . had just gotten out of prison after doing 15 years.” Counsel objected to this testimony and the trial court instructed the jury to disregard it. Because counsel’s objection to this evidence was sustained, we discern no error.

#### D. Marijuana and a False Name

One of the detectives who investigated the robbery testified that Hoard had been arrested in Louisiana “for possession of marijuana and obstruction by providing a false name.” We agree with Hoard that the reasons for his arrest lacked relevance to the charged offense under any inferential theory supplied by MRE 404(b). While the admission of this evidence was plain error, it did not affect the outcome of Hoard’s trial. Given the ample evidence connecting defendant to the current offense, the irrelevant reason for Hoard’s arrest did not tip the scale in favor of the prosecution. Thus it did not affect Hoard’s substantial rights.

#### E. The Louisiana Gun

During his cross-examination, Hoard denied having “put a gun to [Allen’s] head.”<sup>3</sup> The prosecutor then asked, “Isn’t it true back in June you possessed a gun?” When Hoard denied this as well, the prosecutor’s follow-up questioning led Hoard to declare: “I’ve never owned a gun or possessed a gun.” The prosecutor then confronted Hoard with the fact that a gun had been found in Hoard’s Louisiana apartment. Hoard claimed the gun belonged to a friend. We find no error, plain or otherwise, as the prosecutor’s questioning constituted proper impeachment.

#### F. The Gold

Next, Hoard challenges as inadmissible the testimony of an employee of the store that purchased Waramit’s jewelry identifying Hoard as previously having sold two large quantities of

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<sup>3</sup> This testimony corresponded with Allen’s claim that Hoard had instead placed the gun to her stomach.

gold. This evidence supported that the employee correctly identified Hoard as the seller of Waramit's jewelry, and therefore was admitted for a proper purpose under MRE 404(b).

### G. The Target of Other Investigations

Finally, Hoard contends that the prosecutor improperly admitted testimony that a detective was investigating Hoard and Wadley "for similar type crimes." We agree with Hoard that this evidence was inadmissible. It lacked relevance to any fact of consequence. While its admission was plainly erroneous, it did not affect the outcome of Hoard's trial.

The prosecutor presented compelling evidence of Hoard's guilt, primarily consisting of Allen's testimony. Hoard's sale of the jewelry — a fact he did not deny — firmly buttressed Allen's story. Given the strength of the evidence linking Hoard to the armed robbery, the detective's improper testimony linking Hoard to other crimes neither resulted in the conviction of an actually innocent defendant nor seriously affected the fairness, integrity or public reputation of his trial.

## II. INEFFECTIVE ASSISTANCE OF COUNSEL

Hoard criticizes the performance of his trial counsel on two grounds: her failure to object to the evidence he asserts was inadmissible under MRE 404(b), and her failure to file a notice of an alibi defense. Because he raised neither claim in the trial court, they are unpreserved and we must limit our review to mistakes apparent on the existing record. *People v Riley (After Remand)*, 468 Mich 135, 139; 659 NW2d 611 (2003).

“[I]t has long been recognized that the right to counsel is the right to the effective assistance of counsel.” *United States v Cronin*, 466 US 648, 654; 104 S Ct 2039; 80 L Ed 2d 657 (1984), quoting *McMann v Richardson*, 397 US 759, 771 n 14; 90 S Ct 1441; 25 L Ed 2d 763 (1970). In *Strickland v Washington*, 466 US 668, 687; 104 S Ct 2052; 80 L Ed 2d 674 (1984), the United States Supreme Court held that a convicted defendant's claim of ineffective assistance of counsel includes two components: “First, the defendant must show that counsel's performance was deficient. . . . Second, the defendant must show that the deficient performance prejudiced the defense.” To establish the first component, a defendant must show that counsel's performance fell below “an objective standard of reasonableness” under “prevailing professional norms.” *People v Solmonson*, 261 Mich App 657, 663; 683 NW2d 761 (2004). With respect to the prejudice aspect, the defendant must demonstrate a reasonable probability that but for counsel's errors, the result of the proceedings would have differed. *Id.* at 663-664. The defendant must overcome the strong presumptions that his “counsel's conduct falls within the wide range of reasonable professional assistance,” and that his counsel's actions represented sound trial strategy. *Strickland*, 466 US at 689.

Defense counsel possesses “wide discretion in matters of trial strategy.” *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). We may not “substitute our judgment for that of counsel on matters of trial strategy, nor will we use the benefit of hindsight when assessing counsel's competence.” *People v Payne*, 285 Mich App 181, 190; 774 NW2d 714 (2009) (quotation marks and citation omitted). And “[d]ecisions regarding what evidence to present,

whether to call witnesses, and how to question witnesses are presumed to be matters of trial strategy[.]” *People v Horn*, 279 Mich App 31, 39; 755 NW2d 212 (2008).

Hoard’s counsel did not perform ineffectively by failing to lodge meritless objections to testimony regarding Hoard’s participation in previous robberies, his possession of a silver handgun, his prior gold sales, or to the prosecutor’s impeachment of Hoard’s denial of gun ownership. See *People v Fike*, 228 Mich App 178, 182; 577 NW2d 903 (1998). While counsel should have objected to the marijuana and false name evidence and to the detective’s testimony placing Hoard at the center of other investigations, these errors did not alter the result of the proceedings. See *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). Hoard cannot show that his counsel’s failure to object to certain isolated pieces of inadmissible evidence qualified as ineffective assistance of counsel in light of the strong and untainted evidence of his guilt.

Nor do we find that counsel performed ineffectively with regard to Hoard’s claimed alibi defense. The record demonstrates that counsel interviewed the potential alibi witness several times, determined that the witness did not know where Hoard was at the time of the robbery, and on that basis elected not to present an alibi defense. No evidence supports that defense counsel failed to investigate the possibility of an alibi defense. Accordingly, Hoard has failed to establish the factual predicate for his ineffective assistance claim. *People v Hoag*, 460 Mich 1, 6; 594 NW2d 57 (1999).

### III. REMAINING ISSUES

In his Standard 4 brief, Hoard first argues that Allen’s testimony constituted perjury because Waramit’s description of the second assailant did not match Hoard. Standing alone, testimonial contradictions or inconsistencies simply do not demonstrate perjury. *People v Kozyra*, 219 Mich App 422, 429; 556 NW2d 512 (1996). Rather, the evidence must strongly corroborate the contradictory testimony. *Id.* Here, Waramit admitted that he did not have a good opportunity to observe the second assailant. No corroborative evidence supports that Allen committed perjury.

Hoard next claims that after eliminating Allen’s perjurious testimony, no other evidence connected him to the robbery. Therefore, Hoard reasons, he is actually innocent and entitled to reversal of his conviction. Because the record does not support that Allen committed perjury and strong evidence demonstrated Hoard’s guilt, he is not entitled to relief.

Hoard also complains that the prosecutor erred by eliciting fraudulent evidence of the prior police investigations directed at himself and Wadley and that a gun was found in his Louisiana apartment. He provides no explanation for why those two pieces of testimony were fraudulent, however, and thus has abandoned the issue. *People v McPherson*, 263 Mich App 124, 136; 687 NW2d 370 (2004), rev’d in part on other grounds sub nom *McPherson v Woods*, 506 Fed Appx 379 (CA 6, 2012).

Hoard’s final argument centers on Allen’s recounting of Wadley’s claim that he and Hoard had robbed Waramit, and the detective’s testimony that the police were investigating Wadley and defendant for other robberies. This evidence, Hoard contends, constituted hearsay,

and its admission violated his rights under the Confrontation Clause. US Const, Am VI; Const 1963, art 1, § 20. Wadley's statement to Allen was nontestimonial. *People v Bennett*, 290 Mich App 465, 483; 802 NW2d 627 (2010) (“[A] statement made to an acquaintance, outside a formal proceeding, is a nontestimonial statement and may be admitted as substantive evidence at trial[.]”). Only testimonial statements implicate the Confrontation Clause. *People v Taylor*, 482 Mich 368, 377; 759 NW2d 361 (2008).<sup>4</sup> The detective's testimony was not offered for its truth, but rather to explain how the officer eventually obtained Hoard's telephone records. The detective's statement was not hearsay and did not violate the Confrontation Clause. *People v Chambers*, 277 Mich App 1, 10-11; 742 NW2d 610 (2007).

Affirmed.

/s/ William C. Whitbeck

/s/ Joel P. Hoekstra

/s/ Elizabeth L. Gleicher

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<sup>4</sup> Hoard also complains that the prosecutor and the court violated his due process rights by denying him pretrial access to Allen for a preparatory interview, which left him ill-prepared, thereby interfering with his right to confront the witness at trial. Hoard does not seek appellate relief for any discovery or due process violation, however. And the Confrontation Clause requires only an opportunity for cross-examination; it does not guarantee witness interviews or depositions.