

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT E. LEE,

Defendant-Appellant.

UNPUBLISHED

March 4, 1997

No. 185847

Detroit Recorder's Court

LC No. 94-000596

Before: Cavanagh, P.J., and Gage and D.A. Burrell,* JJ.

PER CURIAM.

Following a jury trial, defendant was found guilty but mentally ill of assault with intent to commit murder, MCL 750.83; MSA 28.278, breaking and entering an occupied dwelling, MCL 750.110; MSA 28.305, and possession of a firearm during the commission of a felony, MCL 750.227b(1); MSA 28.424(2)(1). Defendant now appeals as of right from these convictions. We affirm.

Defendant first argues that the trial court committed reversible error by permitting testimony of other crimes and bad acts to be admitted as evidence against him. Defendant contends that the complainant's testimony that defendant previously rammed his car into hers and tried to choke her was improperly admitted. Defendant failed to object to the admission of this testimony, which precludes appellate review of its admission absent manifest injustice. *People v Potra*, 191 Mich App 503, 512; 479 NW2d 707 (1991). He also complains of the admission into evidence of weapons, ammunition, and shell casings found in his home. All of this evidence was properly admitted by the trial court.

As a general rule, evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. MRE 404(b). However, such evidence may be admitted if: (1) it is relevant to an issue other than character or propensity, (2) it is relevant to an issue or fact of consequence at trial, and (3) its probative value is not

* Circuit judge, sitting on the Court of Appeals by assignment.

substantially outweighed by the danger of unfair prejudice. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993); *People v Catanzarite*, 211 Mich App 573, 578-579; 536 NW2d 570 (1995).

The three-part test was met in this case. First, the complainant's testimony and the weapons found in defendant's home were relevant to issues other than defendant's character or propensity in that both were evidence of defendant's intent and absence of mistake. Second, defendant's intent was the central issue at trial. Defendant presented an insanity defense, claiming that he entered the complainant's house and began shooting because he mistakenly believed that there were men in the house placing the complainant in danger. Third, the evidence was more probative than prejudicial. As noted, the evidence was probative of whether defendant had the requisite intent to commit the offense of assault with intent to commit murder or whether, as defendant claimed, he had the intent to protect the victim. The potential for prejudice exists if the prior bad acts would divert a jury from an objective appraisal of defendant's guilt or innocence or if the jury would be led to convict a defendant because he is "unsavory." *People v Ullah*, 216 Mich App 669, 676; 550 NW2d 568 (1996). Because the evidence spoke directly to the issues of intent and lack of mistake, its probative value substantially outweighed any danger of unfair prejudice.

Defendant next argues that the trial court committed reversible error when it did not hold evidentiary hearings on the issues of suppression of evidence and defendant's confession after the proper motions had been filed. Defendant's initial counsel filed motions for a *Walker*¹ hearing and to suppress evidence of weapons seized from his home at the time of his arrest. However, defendant's subsequent trial attorney did not pursue the motions. Consequently, the motions were never heard. Defendant now argues that the trial court erred in failing to conduct these hearings. We disagree.

In general, the denial of a pretrial motion for a *Walker* hearing constitutes error. *People v Littlejohn*, 197 Mich App 220, 222; 495 NW2d 171 (1992). In this case, however, the trial court did not deny defendant a *Walker* hearing and an evidentiary hearing on his motion to suppress evidence. Rather, it is evident that defense counsel decided to abandon the motions as a matter of trial strategy. Defendant never denied shooting a gun at complainant's house. Instead, defendant's defense was one of insanity. Defendant's statement and the weapons found in his home corroborated defendant's theory that he did the shooting under the misconception that complainant was in danger. Under these circumstances no reversible error occurred.

Affirmed.

/s/ Mark J. Cavanagh

/s/ Hilda R. Gage

/s/ Daniel A. Burrell

¹ *People v Walker (On Rehearing)*, 374 Mich 331, 338; 132 NW2d 87 (1965).