

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD LEROY DAVIS,

Defendant-Appellant.

UNPUBLISHED

March 26, 1999

No. 201655

Oakland Circuit Court

LC No. 95-137067 FH

Before: Doctoroff, P.J., and Smolenski and Whitbeck, JJ.

PER CURIAM.

Defendant was convicted by a jury of first-degree home invasion, MCL 750.110a(2)(b); MSA 28.305(a)(2)(b), and sentenced as a fourth-offense habitual offender, MCL 769.12; MSA 28.1084, to eight to twenty years' imprisonment. Defendant appeals as of right. We affirm.

Defendant's sole issue on appeal is that the trial court abused its discretion in admitting similar bad-acts evidence in violation of MRE 404(b). We disagree. The admissibility of bad-acts evidence is a matter within the discretion of the trial court. *People v Catanzarite*, 211 Mich App 573, 579; 536 NW2d 570 (1995).

During trial, Police Officer Hiller testified that he received a "be on the lookout" (hereinafter BOL) advisement from dispatch related to a home invasion. Thereafter, several other BOL's were issued providing greater description of the perpetrator. These BOL's, however, were the result of several crimes committed over a period of forty-eight hours. Defendant argues that the evidence was impermissible character evidence used to show that defendant was on a crime spree the day of the home invasion and that the prosecutor failed to give notice pursuant to MRE 404(b)(2).

Evidence of a person's other bad acts is not admissible to prove the character of the person in order to show that he acted in conformity therewith. MRE 404(b); *People v VanderVliet*, 444 Mich 52, 63; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). However, evidence of bad acts is admissible if the evidence is offered for a proper non-character purpose, is relevant, and its probative value is not substantially outweighed by the danger of unfair prejudice. MRE 404(b); *VanderVliet*, *supra* at 74-75.

It is clear from the record that the prosecution did not use the subsequent BOL's as evidence of defendant's bad character to show that he acted in conformity therewith on the occasion in question. Instead, the evidence was relevant only to show that Hiller and the other officers had enough descriptive detail of defendant to effectuate an arrest. The prosecutor failed to give notice pursuant to MRE 404(b)(2) for the simple reason that she was not aware that Hiller would provide greater detail than the victim as to the perpetrator's license plate number and the description of the other individual who was with defendant. Evidence of the subsequent BOL's was necessary to show that the witnesses' conflicting testimony was not the result of fabrication. It provided a reasonable explanation for the discrepancy in testimony.

In addition, while evidence that defendant was on a crime spree would have been prejudicial, the subsequent crimes that defendant allegedly committed were never revealed to the jury. Rather, Hiller testified that he received the information from dispatch for incidents which occurred over a period of forty-eight hours. The "incidences" were never explained. Therefore, the evidence was offered for a proper purpose, was relevant, and its probative value was not substantially outweighed by its potential for unfair prejudice. *VanderVliet, supra*. The trial court did not abuse its discretion in allowing the introduction of the evidence. *Catanzarite, supra*.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Michael R. Smolenski
/s/ William C. Whitbeck