STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 2, 2000
v	No. 214358 Mason Circuit Court
THEODORE MAX JOHNSON, Defendant-Appellant.	LC No. 97-013281-FH

Before: Saad, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

A jury convicted defendant of exposing an animal to a poisonous substance, MCL 750.50b; MSA 28.245(b). The trial court sentenced defendant to one year in jail and to eighteen months' probation. Defendant appeals as of right. We affirm.

On appeal, defendant argues that the trial court erred in denying his motion for a directed verdict because the circumstantial evidence was insufficient to establish the charged offense. We disagree. In reviewing a trial court's decision on a motion for a directed verdict, this Court views the evidence presented by the prosecutor up to the time the motion was made in the light most favorable to the prosecution and determines whether a rational trier of fact could find that the essential elements were proven beyond a reasonable doubt. *People v Crawford*, 232 Mich App 608, 615-616; 591 NW2d 669 (1998).

A conviction for exposing an animal to a poisonous substance requires proof that the defendant (1) willfully, maliciously and without just cause or excuse (2) exposed an animal to any poisonous substance (3) with the intent that the substance be taken or swallowed by the animal. MCL 750.50b; MSA 28.245(b). It is well established that circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime. *Crawford*, *supra* at 616; see also *People v Bottany*, 43 Mich App 375, 377-378; 204 NW2d 230 (1972) (the identity of the defendant as the person who committed a crime may be established beyond a reasonable doubt by segments of circumstantial proof in combination, even if each element standing alone might not be sufficient).

Here, the evidence viewed in the light most favorable to the prosecution established that: defendant and complainant lived next door to each other for twenty-five years; complainant's dog, Zack, liked to visit the compost pile in defendant's back yard when he was not confined; on the day of the alleged poisoning Zack was placed in a fenced-in-yard, but escaped sometime between 9:00 a.m. and 4:30 p.m. while complainant's family was gone; when the family returned, Zack appeared disoriented and was vomiting a "bright green clear liquid"; Zack was eventually diagnosed with kidney failure and was euthanized several days after the symptoms first appeared; specialists confirmed that Zack's condition was consistent with antifreeze poisoning; a bowl containing dog food and a green liquid that tested positive for antifreeze – a substance animals like to consume because it has a sweet taste – was found on defendant's compost pile; another bowl that appeared to contain the same substances was found underneath bushes in the front of defendant's house; when the police first asked defendant about the bowls and confronted him with the contents, he denied that he had any knowledge of the bowls and abruptly emptied them; defendant subsequently told police that he had taken the bowls outside, but forgot to empty them onto the compost pile. Viewed in a light most favorable to the prosecutor, we conclude that this circumstantial evidence was more than sufficient to enable the jury to find beyond a reasonable doubt that defendant committed the charged offense. While defendant presented testimony showing that there were other possible sources of antifreeze and that Zack came running from a direction opposite defendant's home on the day of the alleged poisoning, questions pertaining to the weight of the evidence are appropriately left for the trier of fact. *People v Wolfe*, 440 Mich 508, 514-515; 489 NW2d 748 (1992). Consequently, the trial court did not err in denying defendant's motion for a directed verdict.

Defendant next contends that the trial court abused its discretion in admitting evidence surrounding a 1991 incident in which defendant initiated proceedings to have complainant's previous dog euthanized, and testimony regarding a 1997 incident in which defendant allegedly poisoned a neighbor's lawn in retaliation for the neighbor having blown grass clippings onto his lawn. Again, we disagree. This Court reviews a trial court's decision to admit evidence for an abuse of discretion. *People v Crawford*, 458 Mich 376, 385; 582 NW2d 785 (1998).

Pursuant to MRE 404(b) evidence of other crimes, wrongs, or acts is admissible if the evidence is (1) offered for a proper purpose rather than to prove the defendant's character or propensity to commit a crime (2) relevant to an issue or fact of consequence at trial, and (3) sufficiently probative to outweigh the danger of unfair prejudice. *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). Accord *Crawford*, *supra* at 385; *People v Starr*, 457 Mich 490, 496; 577 NW2d 673 (1998).

To the extent the contested evidence could be characterized as other acts evidence to which a MRE 404(b) analysis applies, we hold that it was properly admitted for the proffered purpose of showing defendant's motive. In *People v Hoffman*, 225 Mich App 103, 106; 570 NW2d 146 (1997), this Court defined the term "motive" for purposes of 404(b) as follows:

> Cause or reason that moves the will and induces action. An inducement, or that which leads or temps the mind to indulge in a criminal act. [] In common usage intent and "motive" are not infrequently regarded as one in the same thing. In law there is a

> distinction between them. "Motive" is the moving power which impels to action for a definite result. Intent is the purpose to use a particular means to effect such a result. "Motive is that which incites or stimulates a person to do an act." [Citations omitted.]

The prosecutor in this case did not offer or use the contested evidence to establish that defendant acted in conformity with a propensity to commit bad acts. Rather, the prosecutor used the evidence to counteract defendant's general denial that he attempted to poison complainant's dog by establishing defendant's motive for doing so. See *Starr*, *supra*, 457 Mich 501. The contested evidence tended to establish that defendant was extremely protective of his property and took serious issue when anything encroached upon it. Defendant's apparently powerful protectiveness – a protectiveness that was exemplified with evidence that he became upset even when grass clippings, dogs, or dog excrement came onto his property – would tend to provide the jury with an explanation for why defendant may want to commit the otherwise inexplicable crime of poisoning his neighbor's dog. Moreover, the background evidence establishing defendant's motivation put the crime in context and helped the jury understand why defendant might be interested in leaving traps on his lawn that would expel (perhaps permanently) any unwanted invader. Under these circumstances, we hold that the evidence was properly admitted to establish defendant's motive for committing what might otherwise be considered an inexplicable crime, and the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. See *Hoffman*, *supra*. Therefore, the trial court did not abuse its discretion in admitting the contested evidence at trial.

Finally, defendant argues that the prosecutor's remarks and questioning denied him a fair trial. Because defendant neither objected nor requested curative instructions, appellate review is foreclosed unless no curative instruction could have removed any undue prejudice to defendant or failure to consider the issue would result in manifest injustice. *People v Reid*, 233 Mich App 457, 466; 592 NW2d 767 (1999). After a contextual review of the prosecutor's remarks and questions, we find no impropriety. Moreover, any prejudice resulting from the prosecutor's conduct was cured by the trial court's instruction that the attorney's statements were not evidence and that the jurors should only accept comments supported by the evidence. *People v Bahoda*, 448 Mich 261, 281; 531 NW2d 659 (1995). Accordingly, manifest injustice will not result from our failure to review the alleged misconduct.

Affirmed.

/s/ Henry William Saad
/s/ Kathleen Jansen
/s/ Michael J. Talbot