

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PAUL JAMES GOODIN,

Defendant-Appellant.

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UNPUBLISHED  
September 1, 2000

Nos. 218644; 218645; 218646  
Ottawa Circuit Court  
LC Nos. 98-021662-FH  
98-021674-FH  
98-021675-FH

Before: White, P.J., and Talbot and R.J. Danhof,\* JJ.

PER CURIAM.

Following a jury trial in these consolidated cases, defendant was convicted of four counts of breaking and entering a motor vehicle with intent to steal property valued over \$5, MCL 750.356a; MSA 28.588(1), and one count of breaking and entering a building with intent to commit larceny, MCL 750.110; MSA 28.305. He was sentenced to 2½ to 5 years' imprisonment for each breaking and entering a motor vehicle conviction and to 2½ to 10 years' imprisonment for the breaking and entering a building conviction, to be served concurrently. Defendant appeals as of right. We affirm, but remand for a determination regarding whether defendant is entitled to additional jail credit.

Defendant argues that the circumstantial evidence was insufficient to establish his identity as the perpetrator of the crimes. We disagree.

In reviewing the sufficiency of the evidence, we must view the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201; 489 NW2d 748 (1992). It is well established that circumstantial evidence and reasonable inferences drawn from it may be sufficient to prove the elements of the crime. *People v Crawford*, 232 Mich App 608, 616; 591 NW2d 669 (1998); see also *People v Bottany*, 43 Mich App 375, 377-378; 204 NW2d 230 (1972) (the identity of the defendant as the

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

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 testimony established that in the early morning hours, the police followed a single set of distinctive footprints in the snow; the footprints suspiciously led from one vehicle to another and from one building to another and eventually led to the home where defendant was found in a bedroom; fresh snow appeared on the bedroom floor; defendant's pants were still frozen from the snow; the tread on defendant's shoes matched the footprints that an officer had followed; photographs of the footprints in the snow showed that they matched the prints made by defendant's shoes; and, defendant's pants and jacket pockets contained various items stolen from the vehicles and identified by the victims at trial.

The evidence also established that the same set of identifiable footprints led up to and through a closed garage, which belonged to one of the victims, and that an item found in defendant's possession came from inside the garage. While defendant denies that he was involved in the offenses and that the footprint evidence was tenuous, issues concerning the weight of the evidence and witness credibility are appropriately left for the trier of fact and will not be resolved anew by this Court. *People v Avant*, 235 Mich App 499, 506; 597 NW2d 864 (1999); *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). Accordingly, viewed in a light most favorable to the prosecution, we conclude that the circumstantial evidence presented was sufficient to enable a rational jury to infer beyond a reasonable doubt that defendant committed the breaking and entering offenses.

Defendant next argues that the trial court abused its discretion in admitting bad acts evidence consisting of three additional vehicle break-ins for which he was not charged. However, defendant failed to preserve this issue because he did not object to admission of the contested evidence below. *People v Dunham*, 220 Mich App 268, 273; 559 NW2d 360 (1996). Therefore, our review is limited to determining whether defendant has demonstrated a plain error that was prejudicial, i.e., that could have affected the outcome of the trial. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Notwithstanding MRE 404(b), the common law continues to recognize that evidence of other criminal acts is admissible where they constitute part of the res gestae of the charged offense. *People v Coleman*, 210 Mich App 1, 5; 532 NW2d 885 (1995); *People v Bowers*, 136 Mich App 284, 293-297; 356 NW2d 618 (1994); *People v Smith*, 119 Mich App 431, 436; 326 NW2d 533 (1982). Thus, evidence of other criminal acts is admissible when those acts are "so blended or connected with the [charged offense] that proof of one incidentally involves the other or explains the circumstances of the crime." *People v Sholl*, 453 Mich 730, 742; 556 NW2d 851 (1996), quoting *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978). "Res gestae" has alternatively been defined as "the facts which so illustrate and characterize the principal fact as to constitute the whole one transaction, and render the latter necessary to exhibit the former in its proper effect." *People v Robinson*, 128 Mich App 338, 340; 340 NW2d 303 (1983), quoting *People v Castillo*, 82 Mich App 476, 479-480; 266 NW2d 460 (1978).

The prosecution's circumstantial case against defendant was based in large part on the testimony of two police officers who followed the set of footprints that led from one vehicle to another,

and eventually to defendant and the stolen items. Testimony from three witnesses whose vehicles were entered along defendant's path, in addition to the four vehicles from which items were taken, was necessary to explain the events which ultimately led to his arrest. Thus, this evidence was part of the res gestae of the crime and was needed to give the jury "an intelligible presentation of the full context in which the disputed events took place," *Sholl, supra* at 741; see also *People v Flynn*, 93 Mich App 713, 719; 287 NW2d 329 (1979) ("[w]here other criminal acts are an inseparable part of the whole deed for which defendant is charged, the prosecution is permitted to complete the story of the crime by proving the immediate context of happenings near in time and place). Although the evidence was inherently prejudicial, its probative value was not substantially outweighed by its prejudicial effect in this case. MRE 403. Consequently, the trial court did not abuse its discretion in admitting the contested evidence, and defendant has failed to demonstrate plain error that affected substantial rights. *Carines, supra*.

Defendant's related argument that his trial counsel was ineffective for failing to object to the above evidence similarly lacks merit. As noted, the evidence was admissible, and counsel was not required to advance meritless objections at trial. *People v Torres (On Remand)*, 222 Mich App 411, 425; 564 NW2d 149 (1997). Therefore, defendant has failed to show that his counsel's conduct was objectively unreasonable or prejudicial. *People v Pickens*, 446 Mich 298, 338; 521 NW2d 797 (1994).

Finally, defendant argues that he was entitled to 162 days for time spent in jail in addition to the forty-seven days the trial court applied. Although defendant challenged the accuracy of the credit time listed in the presentence investigation report, the trial court neither addressed nor made findings with respect to defendant's challenge as it was required to do. MCR 6.425(D)(3). Based on the PSIR it would appear that defendant was entitled to additional time, and we are unable to determine the accuracy of the forty-seven day computation with the information contained therein. Accordingly, we remand for a determination regarding whether defendant is entitled additional time.

Affirmed, but remanded for a determination regarding whether defendant is entitled to additional jail credit and, if so, for correction of the judgment of sentence to so reflect. We do not retain jurisdiction.

/s/ Helene N. White  
/s/ Michael J. Talbot  
/s/ Robert J. Danhof