

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL DARNETT RUNYON,

Defendant-Appellant.

UNPUBLISHED

November 13, 2001

No. 226146

Kent Circuit Court

LC No. 99-007654-FH

Before: Doctoroff, P.J., and Wilder and C. C. Schmucker*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of resisting and obstructing a police officer in the discharge of his duties, MCL 750.479, and receiving and concealing stolen property with a value over \$1,000, MCL 750.535(3)(a). The trial court sentenced him as a fourth felony offender, MCL 769.12, to three to fifteen years' imprisonment on each conviction, to be served consecutively to a sentence already being served. Defendant appeals as of right and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's convictions arose out of two separate incidents. In the first, defendant drove an automobile belonging to a used car dealership. In the second, defendant drove this same car to a convenience store where the store manager recognized him as someone she had seen stealing cigarettes, from behind the store's checkout counter, on surveillance videotape. The manager called the police, and the responding deputy asked to see defendant's identification and told him that he had information that defendant may have been involved in a prior incident at the store. Defendant stated that his identification was in his car's glove compartment and the two went to defendant's car. Defendant got in the driver's side of the car and "flew his left leg out" in an apparent attempt to kick the deputy, started the car, and put it in reverse. The deputy responded by striking the side of defendant's face, getting on top of defendant, and holding him down on the front seat while putting his foot on the brake pedal. The deputy estimated that he struggled with defendant for four minutes before defendant was subdued.

The trial court allowed the convenience store manager to testify that she recognized defendant because he looked like the person she had seen in the surveillance videotape. The jury

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

was also allowed to view the videotape. On appeal, defendant contends that this evidence was inadmissible under MRE 404(b) and its admission denied him a fair trial. The admissibility of bad acts evidence is within the trial court's discretion and will be reversed on appeal only when there has been a clear abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998).

We find no abuse of discretion in this case. To be admissible under MRE 404(b), other acts evidence generally must satisfy three requirements: (1) it must be offered for a proper purpose, (2) it must be relevant, and (3) its probative value must not be substantially outweighed by its potential for unfair prejudice. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994); *People v Aguwa*, 245 Mich App 1, 7; 626 NW2d 176 (2001). Each of these requirements was met. The prosecutor offered the evidence specifically to show that the deputy had a reason for investigating defendant as a retail fraud suspect and asking for his identification. Other acts evidence is admissible where the evidence is offered to prove the essential elements of the offense and not to prove the defendant's character or propensity to commit the offense. *Aguwa, supra* at 8. One of the elements of resisting and obstructing an officer in the discharge of his duty is that the officer was carrying out lawful duties at the time of the offense. CJ2d 13.2. "Lawful duties" includes ordinary police functions, including investigation of an alleged crime. *People v Wess*, 235 Mich App 241, 243-244; 597 NW2d 215 (1999).

In addition, because the videotape is evidence probative of defendant's motive for resisting arrest (i.e., to avoid prosecution for stealing the cigarettes), it was both logically and legally relevant. Motive has long been defined in Michigan case law as "the inducement for doing some act." *People v Kuhn*, 232 Mich 310, 312; 205 NW 188 (1925). Our courts have held that evidence of a defendant's motive is logically relevant in order to establish (1) identity, (2) actus reus, and (3) mens rea. *People v Sabin (After Remand)*, 463 Mich 43, 68; 614 NW2d 888 (2000), citing Imwinkelried, Uncharged Misconduct Evidence, §§ 3:15, 4:19, and 5:35; see also *People v Engelman*, 434 Mich 204, 223 n 28; 454 NW2d 656 (1990). Here, the videotape is powerful evidence of defendant's mens rea. Because defendant clearly knew whether he stole the cigarettes, videotaped proof that he stole the cigarettes would establish both that he knew the deputy was going to be making an arrest, and that the struggle was the result of his intention to resist the deputy. Thus, because the videotape tended to make the existence of a fact of consequence more probable (i.e., the videotape proved elements of the crime), the videotape was legally relevant. See generally *People v Hawkins*, 245 Mich App 439, 448-450; ___ NW2d ___ (2001); MRE 401.

Finally, the probative value of the evidence was not substantially outweighed by its prejudicial effect, especially in light of the limiting instruction given by the trial court.

Defendant also claims that the court's cautionary instruction at the end of the trial did not clarify that the jury could not consider the videotape and testimony when deciding the receiving and concealing stolen property count. Defendant approved the instructions as given, however, and therefore has waived this argument. *People v Carter*, 462 Mich 206, 215; 612 NW2d 144 (2000).

Affirmed.

/s/ Martin M. Doctoroff

/s/ Kurtis T. Wilder

/s/ Chad C. Schmucker