

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDWARD TORREZ BLAND,

Defendant-Appellant.

UNPUBLISHED

December 21, 2001

No. 226395

St. Clair Circuit Court

LC No. 99-001877-FH

Before: Meter, P.J., and Jansen and Gotham*, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for possession of less than 25 grams of cocaine. MCL 333.7403(2)(a)(v). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Police officers conducting a traffic stop of a van being driven by defendant discovered a plastic bag containing a small quantity of cocaine in the ashtray, under defendant's burning cigarette. Both defendant and the passenger in the van were charged with possession of cocaine. On appeal, defendant asserts that he was denied due process of law because the prosecutor elicited unobjected-to testimony regarding his prior drug usage.

This Court will review a claim of unpreserved error for plain error. See *People v Grant*, 445 Mich 535, 547-548; 520 NW2d 123 (1994). For relief to be warranted, there must have been an error at trial, the error must have been clear and obvious, and the error must have affected the substantial rights of the defendant. *Id.* at 548-549. The plain error rule extends to constitutional as well as nonconstitutional error. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999).

To be admissible under MRE 404(b), bad acts evidence must be offered for a proper purpose, the evidence must be relevant, and the probative value of the evidence must not be substantially outweighed by unfair prejudice. *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). The purpose underlying the rule is the fear that a jury will convict the defendant inferentially on the basis of his bad character, rather than because he is guilty beyond a reasonable doubt of the crime charged. *People v Crawford*, 458 Mich 376, 384; 583 NW2d 785 (1998).

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

Evidence of other bad acts is not admissible to prove the character of a person to show that he acted in conformity therewith. It may be admissible for other purposes, such as proof of intent, preparation, knowledge, or absence of mistake. MRE 404(b)(1). Defendant's knowledge of the presence of cocaine was the central issue at trial, and the bad acts evidence was admissible for that purpose. Had defendant objected to the other acts evidence, the trial court could have given a limiting instruction. *VanderVliet, supra*. Defendant has failed to show plain error.

Defendant has not shown that he was denied the effective assistance of counsel, because an objection from counsel would not have affected the outcome of the case. *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994).

Affirmed.

/s/ Patrick M. Meter
/s/ Kathleen Jansen
/s/ Roy D. Gotham