

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

DOUGLAS GEORGE FLINT,

Defendant-Appellee.

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UNPUBLISHED

April 30, 2002

No. 232534

Lenawee Circuit Court

LC No. 00-008882-FC

Before: Hood, P.J., and Gage and Murray, JJ.

PER CURIAM.

The prosecutor appeals by leave granted from the trial court's order granting in part and denying in part the prosecution's motion in limine seeking the admission of various evidence of other acts by defendant. We affirm in part, reverse in part and remand for further proceedings.

I

Defendant was charged with first-degree premeditated murder, MCL 750.316(1)(a), for the killing of the victim, whose savaged body<sup>1</sup> was found in the basement of a house owned by defendant. The prosecutor filed a pretrial motion in limine, arguing that the following evidence should be admitted at defendant's trial: (1) defendant's prior manslaughter conviction and statements by defendant concerning this killing to prove that "[d]efendant's motive in this particular crime . . . [was] the sheer [sic] pleasure he received from committing such a crime," (2) defendant's threats to and physical assaults of his wife to show that she did not initially disclose information implicating defendant in the victim's murder because she feared him, and (3) defendant's arson of the victim's truck following the murder to show that defendant attempted to hide evidence of the murder. The prosecutor also requested the admission of several other acts that related to defendant's alleged motive to kill the victim, which the prosecutor theorized was to obtain money to support his cocaine habit: (4) defendant's taking of a printer and cash on the day before the murder from a business where he had worked, (5) defendant's several requests for money and his attempts to sell items of property near the time of the murder, and (6) defendant's cocaine use, one instance of which was demonstrated by his loss of a job six weeks before the murder because he tested positive for cocaine use.

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<sup>1</sup> The eighty-two year-old victim had a bludgeoned skull and several stab wounds to his chest and back.

On February 9, 2001, the trial court entered an opinion and order ruling on the prosecutor's motion in limine.<sup>2</sup> The trial court held that evidence of the prior manslaughter conviction would be excluded because it had no similarity to the instant murder, it did not tend to prove any proper purpose under MRE 404(b), and it would be unfairly prejudicial to defendant. The court also held that evidence concerning defendant's prior larcenies, possession of stolen property, requests for money and outbursts of temper when denied, attempts to sell items, and drug addiction would be excluded because of their very limited relevance to this case and the high danger of unfair prejudice that the evidence would occasion.<sup>3</sup> The trial court next excluded evidence of defendant's threats and violence against his wife on the basis that the unfair prejudice in admitting this evidence "would far exceed any probative value." The court lastly determined that evidence of the arson of the victim's truck should be admitted because it "apparently is part of the *res gestae*."

## II

### A

The prosecutor on appeal challenges the propriety of the trial court's exclusions of evidence of defendant's other acts of manslaughter, requests for money, stealing, drug use, and assaults of his wife. The admissibility of evidence of other acts by a defendant is governed by MRE 404(b)(1), which provides as follows:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

The Michigan Supreme Court has characterized MRE 404(b)(1) as "a rule of inclusion that contains a nonexclusive list of 'noncharacter' grounds on which evidence may be admitted. This rule permits the admission of evidence on any ground that does not risk impermissible inferences of character to conduct." *People v Starr*, 457 Mich 490, 496; 577 NW2d 673 (1998).

In determining whether other acts evidence is admissible under MRE 404(b), Michigan courts apply the following four-pronged standard:

First, that the evidence be offered for a proper purpose under Rule 404(b); second, that it be relevant under Rule 402 as enforced through Rule 104(b); third,

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<sup>2</sup> We note that the trial court characterized the prosecutor's motion as one for reconsideration. A previous trial of defendant for the victim's murder had commenced, before which the prosecutor had filed a notice of her intent to admit other acts evidence. The earlier proceedings ended in a mistrial, however, after the trial court found that the jury had been exposed to improper other acts evidence and that limiting instructions would not effectively cure the errors.

<sup>3</sup> The court explained that it "can simply imagine many images that would be projected into the minds of the jurors of a drug-crazed or drug-starved, habitually murderous, habitually thieving Defendant [sic] as they strive to make the community safer from such an individual."

that the probative value of the evidence is not substantially outweighed by unfair prejudice; fourth, that the trial court may, upon request, provide a limiting instruction to the jury. [*Starr, supra*, quoting *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994).]

Under the first prong, MRE 404(b) prohibits the admission of evidence when the proponent's only theory of relevance is that the other act shows the defendant's inclination to wrongdoing in general to prove that the defendant committed the crimes charged. *Starr, supra*. To be admissible, the other acts evidence must relate to one of the nonexhaustive list of purposes within MRE 404(b)(1), or for any other relevant nonpropensity purpose. *Starr, supra* at 496-497. To be relevant under the second prong, the evidence must be "material (related to any fact that is of consequence to the action) and ha[ve] probative force (any tendency to make the existence of a fact of consequence more or less probable than it would be without the evidence)." *People v Sabin (After Remand)*, 463 Mich 43, 55-58; 614 NW2d 888 (2000). The third prong employs the balancing test of MRE 403, which provides for the exclusion of relevant evidence only "if its probative value is *substantially* outweighed by the danger of *unfair* prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Id.* (emphasis added). The decision whether to admit other acts evidence rests within the trial court's discretion and will be reversed only when a clear abuse of discretion exists. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998).<sup>4</sup>

The prosecutor contends that the trial court erred in refusing to admit the proffered evidence because most of the evidence showed defendant's motive for murdering the victim, and otherwise satisfied the requirements of MRE 404(b). "A motive is the inducement for doing some act; it gives birth to a purpose." *Sabin, supra* at 68, quoting *People v Kuhn*, 232 Mich 310, 312; 205 NW 188 (1925). Evidence of motive in a prosecution for murder, although not essential, is always relevant, and evidence of other acts to prove motive is admissible under MRE 404(b)(1). *People v Rice (On Remand)*, 235 Mich App 429, 440; 597 NW2d 843 (1999). Evidence of the defendant's motive to commit the crime may be relevant to his identity, actus reus and mens rea. *Sabin, supra*.

## B

We first address the prosecutor's request to admit evidence of the circumstances surrounding defendant's prior manslaughter conviction. The manslaughter conviction apparently involved a case of road rage during which defendant beat a man until he could not move and then left him in a snow bank to die.<sup>5</sup> The prosecutor maintains that this evidence of the prior killing, in addition to defendant's subsequent discussions of the killing, show defendant's motive,

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<sup>4</sup> We note that we find without merit the prosecutor's suggestion that the trial court abused its discretion by failing to apply the correct legal analysis. Although the trial court did not expressly refer to any governing law in its opinion and order, it is abundantly clear from a review of the court's opinion that it undertook the proper legal analysis, considering the proffered purposes for admitting the other acts evidence, the relevance of the evidence, and the balance of probative value against prejudicial effect.

<sup>5</sup> The prosecutor stated that defendant had slammed a vehicle's door on the victim's head, repeatedly kicked the victim before dragging him into a snowy field, and broke both of his own hands from punching the victim so hard.

identity, plan and scheme for the victim's murder because it illustrates defendant's enthusiasm for killing and the fact that he had the capacity to kill when he became sufficiently angry. While the prosecutor labels her proffered purpose behind the evidence as "motive," we find it plain that the only effect of establishing that defendant killed for the sheer enjoyment of the act would be to demonstrate defendant's propensity for killing and his action in conformity therewith in killing the instant victim. Because the prosecutor seeks to admit circumstances regarding defendant's manslaughter for the sole forbidden purpose of demonstrating his propensity, to show that defendant enjoys killing in order to show that he committed the victim's murder, we cannot conclude that the trial court abused its discretion in refusing to admit this evidence.

## C

We next consider the prosecutor's attempt to admit evidence of defendant's drug use and his need for money to fuel his drug habit. The prosecutor sought to enter testimony from people who saw defendant using cocaine, a drug dealer from whom defendant attempted to buy drugs on several occasions, and the dealer from whom defendant purchased approximately \$100 of cocaine three times per week, as well as evidence that defendant tested positive for cocaine use and consequently lost a job within approximately five or six weeks of the victim's murder. The prosecutor also attempted to admit testimony by witnesses from whom defendant had borrowed or requested money, which the prosecutor alleges occurred "[i]n the six months before [the victim's] murder, and particularly the weeks immediately preceding," and people to whom defendant had tried to sell items within the week of and on the day of the victim's murder.<sup>6</sup> The prosecutor further sought to admit evidence that on the day before the victim's murder defendant had stolen a printer and a small amount of cash.

In *People v Jones*, 119 Mich App 164, 168; 326 NW2d 411 (1982), the prosecutor cross examined the defendant, who was accused of armed robbery, regarding her use of heroin, introduced extrinsic evidence that the defendant had used heroin on one occasion within one or two months before the robbery, and theorized during closing argument that the defendant participated in the charged robbery because she had a drug habit and needed money to buy drugs. This Court explained that evidence that a defendant has a drug addiction at or near the time of a charged theft offense may be relevant and admissible as proof of motive under MRE 404(b). *Jones, supra*. Because of the strong prejudicial effect inherent in evidence of drug addiction, however, this Court held as follows:

[T]he legal relevance of heroin addiction to motive for a theft offense is dependent on two factors: (1) that defendant was addicted at or near the time of the offense and, therefore, compelled to obtain the drug, and (2) that defendant lacks sufficient income from legal sources to sustain his or her continuing need for heroin. Without such a foundation, evidence of heroin use should be excluded from proof of motive, as its prejudicial effect substantially outweighs its probative value. [*Id.* at 168-169.]

In *Jones*, the prosecutor failed to establish the required foundational factors because the defendant denied using heroin during the previous five years, the prosecutor only introduced evidence of one instance of the defendant's heroin use within one or two months of the murder,

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<sup>6</sup> The prosecutor asserts that on the day of the victim's murder defendant tried to sell a drug dealer the victim's truck and some tools owned by the victim.

and no indication existed that the defendant lacked funds from legal sources to sustain her alleged drug habit. *Id.* at 169.

The trial court in this case incorrectly determined that “the use of drug addiction . . . or possession of stolen property, or requests to borrow money and/or further handouts . . . to establish motive in a robbery/murder scenario” constituted an improper purpose for admission under MRE 404(b). According to the prosecutor, she intends to introduce evidence that defendant had a cocaine addiction at the time of the victim’s murder, that defendant lacked sufficient income to sustain his cocaine habit, and that in close temporal proximity to the victim’s murder defendant pestered people to loan him money or to purchase items from him. The evidence proffered by the prosecutor in this case strongly establishes the foundational requirements that defendant was addicted at or near the time of the victim’s murder and that defendant lacked sufficient income from legal sources to sustain his continuing need for cocaine.<sup>7</sup> *Jones, supra* at 168-169. Because the prosecutor did not offer this evidence to show defendant’s propensity for wrongdoing, but to show defendant’s motive for killing the victim, i.e., for his money, we find that a proper purpose supported admission of the evidence.

Furthermore, the evidence regarding defendant’s cocaine use and need for money qualify as relevant because it tends to make more likely than would otherwise be the case that defendant killed the victim for his money, thus substantiating his motive, a fact of consequence to the action. MRE 401; *Sabin, supra*. Although evidence of drug use might carry a strong prejudicial effect, the evidence in this case possesses high probative value because defendant’s drug use and need for money to sustain his habit apparently occurred at and near the time of the victim’s murder. *Jones, supra* at 168. We cannot conclude that any danger of unfair prejudice substantially outweighs the significant probative value of the evidence with respect to defendant’s motive for killing the victim. See *Rice, supra* at 439-441 (finding that highly probative evidence of a defendant’s other acts of drug use, carrying a concealed weapon and theft, which occurred proximate in time to the charged murder, was not substantially outweighed by a danger of unfair prejudice).

Because the trial court incorrectly found no proper purpose for the evidence of defendant’s drug use and his need for and efforts to obtain money at or near the time of the victim’s murder, we conclude that the trial court abused its discretion in excluding this evidence.

#### D

We lastly address the proffered evidence of defendant’s threatening and abusive behavior toward his wife, including that defendant choked his wife, put her in a strangle hold, and threatened that she might end up buried in the basement where the victim’s body was found, which the prosecutor offered to show that defendant’s wife initially was reluctant to come forward with evidence against him because she feared him. The prosecutor offered the evidence for the proper noncharacter purpose of bolstering the wife’s credibility as a witness, and the evidence would tend to enhance the wife’s credibility. We agree with the trial court, however, that the evidence fails the balancing test of MRE 403. In light of the fact that defendant’s wife eventually did provide the police information regarding defendant, the evidence of defendant’s

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<sup>7</sup> In this regard, we note the prosecutor’s expressed intent to prove that defendant met the victim while working to pay off a building contractor to whom defendant owed money. The victim hired the building contractor to remodel the victim’s deck.

domestic abuse against his wife as an explanation why she might have been reluctant to come forward has limited probative value in determining her credibility.<sup>8</sup> The fact that defendant committed acts of violence against his wife, essentially unrelated to the instant murder, creates a substantial risk of inflaming the jury to believe that defendant has a propensity towards violence, lacks morals, and therefore might be guilty of the victim's murder. Because the risk of unfair prejudice to defendant arising from the evidence of domestic abuse substantially outweighs any probative value the evidence possesses, MRE 403, we cannot conclude that the trial court abused its discretion in denying the admission of this evidence.<sup>9</sup>

We affirm the trial court's order to exclude all evidence related to defendant's prior manslaughter conviction and the proffered evidence of defendant's abuse of his wife. We reverse the trial court's order excluding evidence that at or near the time of the victim's murder defendant had a cocaine addiction, lacked sufficient income from legal sources to sustain his need for cocaine, and made various efforts to obtain money to support his addiction. We remand this case for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ Harold Hood

/s/ Hilda R. Gage

/s/ Christopher M. Murray

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<sup>8</sup> We observe, however, that should defense counsel cross examine defendant's wife at trial regarding her initial delay in reporting defendant to the police, the defense will have opened the door to admissibility of the evidence of defendant's abuse.

<sup>9</sup> We note that we do not address defendant's assertion of spousal privilege because the trial court did not rule on this issue and defendant fails to sufficiently develop the issue in his brief on appeal. *People v Connor*, 209 Mich App 419, 422, 430; 531 NW2d 734 (1995).

We further note that the trial court correctly deemed admissible evidence that within twenty-four hours of the victim's murder defendant set fire to the victim's truck in an apparent attempt to destroy evidence of the murder. *People v Sholl*, 453 Mich 730, 742; 556 NW2d 851 (1996) (explaining that "[e]vidence of other criminal acts is admissible when so blended or connected with the crime of which defendant is accused that proof of one incidentally involves the other or explains the circumstances of the crime"), quoting *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978), quoting *State v Villavicencio*, 95 Ariz 199, 201; 388 P2d 245 (1964).