STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 17, 2002
v	No. 229759 Antrim Circuit Court
DOUGLAS WILLIAM ADRIAN, Defendant-Appellant.	LC No. 99-003323-FH

Before: Wilder, P.J., and Bandstra and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury conviction for breaking and entering, MCL 750.110, and challenges as disproportionate his sentence, enhanced as a fourth habitual offender, MCL 769.12, to a term of imprisonment of ten to twenty-five years. We affirm.

Defendant first argues that the trial court erred in admitting into evidence statements that defendant made to police, after receiving *Miranda*[1] warnings, that alluded to his prior convictions and incarceration. Specifically, defendant takes issue with the trial court's ruling that allowed reference to defendant being an "ex-con" and "going back to prison." We review the trial court's decisions on the admission of evidence for abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

At trial, a police detective testified about his conversation with defendant regarding whether defendant was involved in a burglary at the Alden bar. According to the detective, "[defendant] told me that he was an ex-con and that he would go back to prison if he talked to me about it." The detective further testified that defendant sought instead to make a "deal" with police, asking among other things what kind of deal could be made if the money were returned. Over defendant's objections, the trial court permitted this evidence to be presented through the detective's testimony, although no evidence as to the nature of defendant's previous crimes was permitted. The trial court instructed the jury that the testimony could be considered only for the limited purpose of determining whether defendant was identifying himself as the person who committed the crime under investigation, and not for any other purpose. Specifically, the trial court told the jury that the testimony could not be considered as evidence that "defendant is a bad

[1] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

person, or that he is likely to commit crimes[;] you must not convict the defendant here because you think he is guilty of other bad conduct."

We disagree with defendant's argument that the probative value of this testimony was substantially outweighed by its prejudicial effect. Under MRE 403, relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ." Here, the evidence was highly probative; while it did not quite constitute a confession, the trial court was correct in finding that it was "tantamount to a confession." In contrast, the prejudice to defendant from this evidence was strictly limited, both by the trial court's limiting instruction, which the jury can be presumed to have followed, *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998), and the fact that the jury was not told the nature of defendant's other crimes, which included breaking and entering and other similar offenses. Moreover, while any evidence that is probative of a defendant's guilt is, by definition, prejudicial to the defendant, the specific prejudice from defendant's reference to being an "ex-con" came not from police or prosecution attempts to introduce extraneous evidence of prior bad acts, but rather from defendant's own decision, after receiving *Miranda* warnings, to admit that talking truthfully about the crime would result in his being convicted of it and to volunteer the unsolicited information that he had a criminal record. We find no abuse of discretion.[2]

Defendant next argues that there was insufficient evidence to sustain his conviction. We disagree. We review challenges to the sufficiency of the evidence to determine whether, when the evidence is viewed in the light most favorable to the prosecution, a rational trier of fact could have found the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999). In making this determination, we will not interfere with the jury's role of determining the weight of evidence or the credibility of witnesses. *People v Terry*, 224 Mich App 447, 452; 569 NW2d 641 (1997). In ascertaining whether guilt was proved beyond a reasonable doubt, we do not inquire into whether the prosecution was able to "disprove every reasonable theory consistent with innocence," but only whether guilt was shown "'in the face of whatever contradictory evidence the defendant may provide.'" *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000) (citation omitted). Further, circumstantial evidence and the reasonable inferences that arise from the evidence can constitute satisfactory proof of the elements of the crime. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999).

Breaking and entering requires a showing that the defendant broke into and entered a building with the intent to commit a larceny or felony therein. *People v Adams*, 202 Mich App 385, 390; 509 NW2d 530 (1993). Here, the evidence against defendant was circumstantial, but strong. The evidence demonstrated that defendant was seen wandering the streets of Alden in the early morning hours, at approximately 3:00 a.m., on the date of the break-in, that he drove his truck from where it had been parked with his headlights off, that his gloves had grease on them that was similar to the grease on the door broken into, and that he had large amounts of cash arranged in a manner consistent with that of the cash stolen from the bar. Further, defendant

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[2] To the extent that defendant suggests that the detective could have testified to a redacted version of defendant's statement without quoting defendant's language about being an "ex-con" and going "back to prison," defendant has failed to demonstrate that the law requires such.

made a statement tantamount to a confession and repeatedly asked police whether a deal could be made. Even without the information that defendant was an "ex-con," information that had no relevance to his guilt, the evidence, considered in the light most favorable to the prosecution, is sufficient to establish defendant's guilt beyond a reasonable doubt.

Finally, defendant challenges his sentence as disproportionate.[3] Because the trial court sentenced defendant as a fourth habitual offender, and because breaking and entering under MCL 750.110 carries a potential sentence of more than five years, the trial court could have sentenced defendant to a term of life in prison. MCL 769.12. The trial court stated that life imprisonment would be excessive, but concluded that a substantial sentence had to be imposed. The trial court noted defendant's criminal history, including six past incarcerations; his susceptibility to compulsive behavior; and his continued engagement in criminal behavior. It is appropriate for a trial court to impose a lengthy sentence where, as here, the criminal history demonstrates that the defendant is unable to conform his conduct to the law. *People v Colon*, ___ Mich App ___; ___ NW2d ___ (2002). Defendant's sentence was not disproportionate.[4]

Affirmed.

/s/ Kurtis T. Wilder
/s/ Richard A. Bandstra
/s/ Joel P. Hoekstra

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[3] The Supreme Court's sentencing guidelines apply to offenses committed before January 1, 1999. MCL 769.34(1); *People v Reynolds*, 240 Mich App 250, 253; 611 NW2d 316 (2000). The present offense occurred September 2, 1998.

[4] We note that the sentencing guidelines do not apply in this habitual offender case, *People v Reynolds*, 240 Mich App 250, 253, n 1; 611 NW2d 316 (2000), citing *People v Cervantes*, 448 Mich 620, 630; 532 NW2d 831 (1995), and that the case on which defendant relies, *People v Schultz*, 435 Mich 517; 460 NW2d 505 (1990), did not involve the sentencing of a habitual offender, and does not dictate a different result, see *Reynolds, supra* at 253-254.