

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD DEAN LIVINGSTON,

Defendant-Appellant.

UNPUBLISHED

December 13, 2002

No. 236864

Grand Traverse Circuit Court

LC No. 00-008351

Before: Owens, P.J., and Murphy and Cavanagh, JJ.

MEMORANDUM.

Defendant appeals as of right his jury conviction for second-degree home invasion, MCL 750.110a(3). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On appeal, defendant argues that the trial court abused its discretion in admitting irrelevant evidence of a break-in to a business that occurred around the same time of the home break-in for which defendant was charged.

MRE 401 provides:

“Relevant evidence” means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.

The determination whether evidence is relevant and the decision whether to admit evidence is within the trial court’s discretion, and is reviewed for abuse of discretion. *People v Aguwa*, 245 Mich App 1, 6; 626 NW2d 176 (2001).

The trial court did not abuse its discretion in finding that the evidence of the business break in was relevant to show a scheme or system of doing an act and to establish identity. The home and the business were located on the same property. Defendant worked for the business and knew the victims would be out of town for the weekend. Both buildings were broken into in the same manner. The court gave a cautionary instruction so the jury would not find defendant guilty of the business break-in, rather than the home invasion. There is no showing that defendant was unfairly prejudiced by the evidence.

Affirmed.

/s/ Donald S. Owens
/s/ William B. Murphy
/s/ Mark J. Cavanagh