

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
February 17, 2004

v

EDDIE LUCHES LEE, JR.,

Defendant-Appellant.

No. 244233
Oakland Circuit Court
LC No. 2000-175938-FC

Before: Cooper, P.J., and O’Connell and Fort Hood, JJ.

PER CURIAM.

Defendant appeals of right his conviction following a jury trial for two counts of armed robbery, MCL 750.529. The trial court sentenced defendant as a fourth habitual offender to 20 to 50 years on each count and ordered them to run concurrently. This case arose when defendant pointed a handgun at a husband and wife who were managing a gas station and demanded the money in the till. We affirm.

Defendant primarily argues that the trial court should not have permitted the prosecutor to introduce evidence that defendant robbed a bank near the gas station a few months before he robbed the gas station. We disagree. We review for abuse of discretion a trial court’s decision to allow facts into evidence. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002).

In *Hine*, our Supreme Court reiterated that “evidence of similar misconduct is logically relevant to show that the charged act occurred where the uncharged misconduct and the charged offense are sufficiently similar to support an inference that they are manifestations of a common plan, scheme, or system.” *Id.* at 251. If the evidence is relevant for this purpose, then MRE 404(b) does not require its exclusion as evidence of character alone.

In this case, the prosecutor presented evidence that defendant robbed a bank near the gas station a few months earlier. At the earlier robbery, defendant used a similar style handgun and approached and ordered his victims about in similar ways, using similar threats and language. During each robbery, he covered his head with the hood of his sweatshirt. He entered and left each robbery on foot. While defendant changed some aspects of his approach, these appear to indicate an effort to avoid the mistakes he made in the first robbery. For example, defendant did not wear a mask in the gas station robbery, probably because someone outside the bank saw him putting it on and later identified him as the robber. Nevertheless, the spatial and temporal proximity of the incidents and other similarities shown by the prosecutor lead us to conclude that

the trial court did not abuse its discretion by admitting the evidence of the earlier robbery with appropriate instructions for its limited use.

Defendant next argues that a photographic lineup shown to one of the victims was improperly suggestive because he was the only person portrayed in a hooded sweatshirt. Defendant failed to object to the lineup or his in-court identification by the victim, however, so he forfeited this issue. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). We do not find that the lineup was so suggestive that introducing either the original identification or the in-court identification at trial constituted plain error that affected defendant's substantial rights. *Id.*

Affirmed.

/s/ Jessica R. Cooper
/s/ Peter D. O'Connell
/s/ Karen M. Fort Hood