

STATE OF MICHIGAN  
COURT OF APPEALS

---

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JEFF EDWARD TITUS,

Defendant-Appellant.

---

UNPUBLISHED

February 19, 2004

No. 243642

Kalamazoo Circuit Court

LC No. 02-000166-FC

Before: Murray, P.J., and Murphy and Markey, JJ.

PER CURIAM.

The jury found defendant guilty on two counts of first-degree premeditated murder, MCL 750.316(1)(a), and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to a mandatory life term of imprisonment without the possibility of parole. Defendant appeals his convictions as of right. We affirm.

Defendant was convicted after a Kalamazoo County cold-case homicide investigation was pursued in the unsolved shooting deaths of two men in the Fulton State Game Area two days into firearm deer season in 1990. The victims were not hunting together, but were found near one another, both shot in the back, through their hunting licenses, from close range. The bodies were found in a section of the game area adjacent to defendant's property. There were no eyewitnesses to the incident; however, the prosecutor presented a parade of witnesses who testified with respect to incriminating statements made by defendant, incriminating acts, and other actions undertaken by defendant in regard to hunters on or near his property.

I

During the trial, the prosecutor introduced evidence of defendant's other acts under MRE 404(b). Defendant contends that the trial court committed error requiring reversal by finding this evidence admissible. We review the trial court's decision to allow admission of evidence pursuant to MRE 404(b) for an abuse of discretion. *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002). An abuse of discretion occurs when the result is so palpably and grossly violative of fact and logic that it evidences not the exercise of will but perversity of will, and defies rational judgment. *Id.* An abuse of discretion involves far more than a mere difference of opinion. *Id.* A trial court's decision on a close evidentiary question cannot ordinarily be deemed an abuse of discretion. *Id.*

According to the testimony of several witnesses, defendant approached them while they were hunting near his property, or tracking deer onto his property, and demanded that they leave while brandishing a firearm in a threatening manner. The prosecutor's theory of the case was that these acts demonstrated defendant's territorial behavior, and an intent to scare people away from his property. The prosecutor further theorized that these threats on other occasions established defendant's common scheme or plan in committing the murders. Additionally, the prosecutor argued that the other acts were necessary to prove defendant's identity as the murderer, and that the evidence was also indicative of defendant's intent and motive to commit the crimes.

Defendant argues that the evidence only indicated that defendant tended to confront people whom he perceived as trespassers; it did not show motive or intent to commit murder, nor a scheme or plan to shoot people, nor would it establish identity of the murderer.

In *People v Knapp*, 244 Mich App 361, 378-379; 624 NW2d 227 (2001), this Court, discussing the parameters of MRE 404(b), stated:

Pursuant to MRE 404(b), evidence of other crimes or wrongs "is not admissible to prove the character of a person in order to show action in conformity therewith." However, other acts evidence may 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." MRE 404(b).

It is insufficient for the proponent of the evidence to merely recite one of the purposes articulated in MRE 404(b). *People v Crawford*, 458 Mich 376, 387; 582 NW2d 785 (1998). The proponent must also explain how the evidence relates to the recited purposes. *Id.*

The trial court agreed with the prosecutor's arguments and found that the evidence was admissible for all of its proffered purposes. In so doing, the trial court used the test for determining the admissibility of other acts evidence as set forth in *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993), amended 445 Mich 1205; 520 NW2d 338 (1994). *VanderVliet* employs a four-prong test: (1) the evidence must be offered for a proper purpose under MRE 404(b); (2) the evidence is relevant; (3) the probative value of the evidence is not substantially outweighed by unfair prejudice; and (4) the trial court may provide a limiting instruction relating to the evidence if one is requested. *Id.* at 74-75.

With respect to a common plan, scheme, or system, we find instructive our Supreme Court's latest pronouncement in *Hine, supra* at 251-252, wherein the Court stated:

[E]vidence 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. For other acts evidence to be admissible there must be such a concurrence of common features that the uncharged and charged acts are naturally explained as individual manifestations of a general plan. . . . [T]he degree of similarity between the uncharged and charged conduct [is] . . .

higher than that needed to prove intent, but not as great as that needed to prove identity. [Citations omitted.]

Unusual and distinctive features are not required to establish the existence of a common design or plan. *Id.* at 252-253. Evidence of other acts needs only to support the inference that the defendant employed the common plan in committing the charged offense. *Id.* at 253. Here, the other acts evidence indicated that defendant would confront perceived or actual trespassing hunters, rant about alleged property transgressions, and wield a firearm during the confrontation in a threatening manner. The prosecutor attempted to show that in regard to the charged crimes, defendant employed that same plan or scheme, culminating in the death of two hunters. Indeed, there was evidence that the two victims were hunting in an area near defendant's property, that they were killed by a firearm, that defendant had possession of a gun belonging to one of the victims, and that defendant had detailed knowledge regarding the bodies. This circumstantial evidence supports a reasonable inference that defendant confronted the victim hunters in a manner comparable to the manner in which he confronted other hunters, or in other words, he employed the common plan or scheme in committing the murders. The probative value of the evidence was not substantially outweighed by the danger of unfair prejudice.<sup>1</sup> While we recognize that the other acts evidence did not involve defendant actually discharging a firearm, we cannot find an abuse of discretion on the part of the trial court, where the evidence was sufficient to "permit the inference of a plan, scheme, or system." See *Hine, supra* at 253 (prior non-lethal assaults on others sufficiently similar to assault on victim that resulted in death).<sup>2</sup>

Moreover, the other acts evidence was clearly admissible for the purposes of showing motive and intent. See MRE 404(b). Although not an element of the crime, the jury in this case would reasonably have wished to learn of a motive that would explain why defendant shot two individuals in the back. The other acts evidence established that defendant would become angry and aggressive and implicitly threaten violence by revealing a firearm, where he believed a hunter was trespassing on his property. Such evidence would explain why defendant shot the two victims who were hunting on or near his property. We find that the evidence was relevant and highly probative of motive, and that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. Further, the other acts evidence was relevant as circumstantial evidence of defendant's intent, where it reflected his mindset and demeanor in regard to persons hunting on or near his property, and where it suggested that he would indeed kill someone whom he perceived to be a trespasser. We also note that, for those same reasons, the other acts evidence was relevant to premeditation. There was no error in allowing the evidence.

---

<sup>1</sup> A limiting instruction was provided by the court.

<sup>2</sup> Although "identity" requires a higher degree of similarity as indicated in *Hine, supra* at 252, we cannot conclude that the trial court's ruling defied rational judgment, where it was a close evidentiary question, and regardless of any mere opinion to the contrary. *Id.* at 250.

## II

Defendant also argues that the trial court committed error requiring reversal when it denied defendant's motion for directed verdict of acquittal brought pursuant to MCR 6.419(A). Specifically, defendant argues that there was insufficient evidence in the record from which premeditation could be inferred. We disagree.

This Court reviews the trial court's decision on a motion for directed verdict de novo to determine whether, when viewed in the light most favorable to the prosecutor, a rational trier of fact could find that the evidence proves the essential elements of the crimes beyond a reasonable doubt. *People v Kris Aldrich*, 246 Mich App 101, 122-123; 631 NW2d 67 (2001). "Premeditation may be established through evidence of the following factors: (1) the prior relationship of the parties; (2) the defendant's actions before the killing; (3) the circumstances of the killing itself; and (4) the defendant's conduct after the homicide." *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995)(citation omitted). Premeditation and deliberation may be inferred from the circumstances surrounding a homicide. *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2002). Minimal circumstantial evidence is sufficient. *Id.* Premeditation requires time to allow a defendant to take a second look. *People v Kelly*, 231 Mich App 627, 642; 588 NW2d 480 (1998). "A sufficient time lapse to provide an opportunity for a 'second look' may be merely seconds . . . dependent on the totality of the circumstances surrounding the killing[.]" *People v Meier*, 47 Mich App 179, 191-192; 209 NW2d 311 (1973).

The trial court noted that the hunters were each shot through the back, through their hunting licenses, and that this indicated that the murders were committed consistent with an "execution-style killing." The evidence supports the trial court's assessment. Because the victims were shot in the back, it could reasonably be inferred that they had been fleeing when shot, that they had been held at bay when shot, or that defendant surprised and shot them before they could turn around and react. Each of these scenarios support a finding that the shootings were premeditated, in that they gave defendant time to take a second look. Further, as noted above, many witnesses testified that defendant hated hunters and "poachers," he had threatened other hunters on several occasions, and defendant insinuated that he had committed the murders and viewed the murders with approbation. Defendant also took the gun of one of the hunters, cleaned it, and then returned it to the crime scene for law enforcement to find. Taking these circumstances into account, especially when considered in the context that the victims were shot in the back, there was sufficient circumstantial evidence to support a finding of premeditation. Accordingly, the trial court did not err in denying the motion for directed verdict.

Affirmed.

/s/ Christopher M. Murray  
/s/ William B. Murphy  
/s/ Jane E. Markey