

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MORRIS FELTON, JR.,

Defendant-Appellant.

UNPUBLISHED

October 5, 2004

No. 247857

Kent Circuit Court

LC No. 02-007419-FH

Before: Borrello, P.J., and Murray and Fort Hood, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of unarmed robbery, MCL 750.530, entered after a jury trial. We affirm.

Complainant's purse was stolen by a person she testified was similar in appearance to defendant. A search of the vehicle owned by a woman arrested for trespassing revealed various items that belonged to complainant. The woman told the police that she obtained the items from defendant. Police were given a tip that defendant could be located at a carnival, and he was arrested. His duffel bag contained several items belonging to complainant, items belonging to another woman, and drug paraphernalia. A witness testified that her purse had been stolen, and she identified photographs of some items belonging to her that were found in defendant's bag. Defendant admitted that various items found in his bag did not belong to him and that he knew the items were stolen, but maintained that the items had been given to him as collateral for a loan. Defendant denied that he robbed complainant, but admitted that he used her ATM card in an unsuccessful attempt to obtain cash.

Evidence of other crimes, wrongs, or acts is inadmissible to prove the character of a person in order to show that he acted in conformity with it, but may be admissible for other purposes, such as to show proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident. MRE 404(b)(1). The other crimes, wrongs, or acts may be contemporaneous with or prior to or subsequent to the conduct at issue. *Id.* Other acts evidence must be offered for a proper purpose, must be relevant, and its probative value must not be substantially outweighed by its potential for unfair prejudice. A proper purpose is one other than establishing the defendant's character to show his propensity to commit the offense. *People v Starr*, 457 Mich 490, 496; 577 NW2d 673 (1998).

Evidence of misconduct similar to that charged is logically relevant to show that the charged acts occurred if the charged acts and the other acts are sufficiently similar to support an inference that they are the manifestations of a common plan, scheme, or design. The charged acts and the other acts need not be parts of a single continuing plot; however, there must be such a concurrence of common features so that the charged acts and the other acts are logically seen as part of a general plan, scheme, or design. *People v Sabin (After Remand)*, 463 Mich 43, 63-66; 614 NW2d 888 (2000). The admissibility of other acts evidence is within the discretion of the trial court. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998).

To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. Counsel must have made errors so serious that he was not performing as the "counsel" guaranteed by the federal and state constitutions. US Const, Am VI; Const 1963, art 1, § 20; *People v Carbin*, 463 Mich 590, 599-600; 623 NW2d 884 (2001). Counsel's deficient performance must have resulted in prejudice. To demonstrate the existence of prejudice, a defendant must show a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Carbin, supra* at 600.

Defendant argues that he was denied a fair trial due to the admission of unduly prejudicial other acts evidence, and that counsel rendered ineffective assistance by failing to object to the evidence or request an instruction on its proper use. We disagree and affirm. Defendant asserted that the stolen items found in this bag were given to him by others, and that he did not rob complainant. The similarity between evidence pertaining to the charged act and evidence pertaining to the other act, i.e., that defendant had items belonging to complainant and another witness in his bag, was sufficient to demonstrate that the charged act and the other act were part of a common plan or scheme, i.e., to take purses and thereafter carry items from the purses in his bag. *Sabin, supra*. The evidence that defendant had stolen items belonging to another person was offered for a proper purpose, *Starr, supra*, and made it more likely than not that defendant robbed complainant. MRE 401. This evidence, coupled with complainant's testimony that defendant's appearance was similar to that of the person who robbed her and the arrested woman's testimony that the purse defendant brought to her vehicle was similar in appearance to one she had seen carried by a woman only minutes before defendant arrived, supported a finding that defendant robbed complainant. The evidence was properly admitted under MRE 404(b)(1). Defendant has not shown that trial counsel's failure to object to the other acts evidence, including the evidence that he carried drug paraphernalia, or to request an instruction on its use resulted in prejudice. Specifically, he has not shown that, but for counsel's alleged error, it is reasonably probable that the result of the proceedings would have been different. *Carbin, supra*. No plain error occurred. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

Affirmed.

/s/ Stephen L. Borrello
/s/ Christopher M. Murray
/s/ Karen M. Fort Hood