

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONNIE LEE ANDERSON,

Defendant-Appellant.

UNPUBLISHED

June 21, 2007

No. 268463

Macomb Circuit Court

LC No. 05-002715-FC

Before: Whitbeck, C.J., and Wilder and Borrello, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for assault with intent to murder, MCL 750.83, first-degree home invasion, MCL 750.110a(2), and two counts of possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to 30 to 70 years' imprisonment for his assault with intent to murder conviction, 95 months to 20 years' imprisonment for his first-degree home invasion conviction, and two years' imprisonment for each of his felony-firearm convictions. We affirm.

Defendant first argues that the trial court erred when it allowed the prosecutor to admit evidence of his prior bad acts. We disagree. We review a trial court's evidentiary decisions for an abuse of discretion. *People v Manser*, 250 Mich App 21, 31; 645 NW2d 65 (2002).

MRE 404(b)(1) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, 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, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

Three factors must be present for prior acts evidence to be admissible under MRE 404(b)(1): (1) the evidence must be offered for a proper purpose, (2) it must be relevant, and (3) its probative value must not be substantially outweighed by its potential for unfair prejudice. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004), citing *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993).

The first consideration in this matter requires a determination of whether evidence of defendant's prior bad acts was admitted for a proper purpose. *Knox, supra* at 509. "A proper purpose for admission is one that seeks to accomplish something other than the establishment of a defendant's character and his propensity to commit the offense." *People v Johnigan*, 265 Mich App 463, 465; 696 NW2d 724 (2005). The trial court permitted Carl Mack to testify about a previous encounter that occurred between him and defendant. Mack said defendant approached him and Christine Quinn with a stick in his hands, as Mack and Quinn walked to Quinn's apartment after a date. Defendant said "hey, man, that's my wife," and walked toward Mack and Quinn. Defendant did not leave the scene until Mack pulled out a weapon. The other bad acts evidence was admitted to show that defendant's motive for shooting Mack was jealousy over Quinn's new relationship with Mack. Although Quinn claimed that she and defendant were never married, defendant and Quinn dated for several years, and defendant socially referred to Quinn as his wife. The other bad acts evidence was admitted for the proper purpose of explaining the motive for defendant's shooting. Accordingly, we conclude that the evidence was admitted for a proper purpose.

The last two considerations in this matter require consideration of the relevancy of the prior bad acts evidence, and whether the probative value of the prior bad acts evidence was substantially outweighed by its potential for unfair prejudice. *Knox, supra*, p 509. Evidence is relevant if it has "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." MRE 401. The evidence was relevant to defendant's motive. The probative value of the prior bad acts evidence was not substantially outweighed by the danger of unfair prejudice because the prior acts evidence was directly and clearly relevant to defendant's motive.

The trial court did not abuse its discretion when it admitted evidence of defendant's prior bad acts. The evidence was offered for a proper purpose, it was relevant to an issue of consequence at trial, and its probative value was not substantially outweighed by the danger of unfair prejudice. *People v Crear*, 242 Mich App 158, 169-170; 618 NW2d 91 (2000). In any event, the trial court properly instructed the jury to only consider the evidence of defendant's prior bad acts for the limited purpose of deciding whether defendant had a reason to commit the crime. The court also instructed the jury that it must not use the prior bad acts evidence for any other purpose and that it must not convict defendant because it thinks he is guilty of other bad conduct. These limiting instructions were sufficient to assuage the danger of unfair prejudice. For these reasons, the trial court did not abuse its discretion in admitting the prior bad acts evidence.

Defendant also argues that prosecutorial misconduct denied him his right to a fair trial. We disagree. When properly preserved, claims of prosecutorial misconduct are reviewed by this Court de novo to determine whether defendant was denied a fair and impartial trial. *People v Ackerman*, 257 Mich App 434, 448; 669 NW2d 818 (2003).

Defendant takes issue with the following cross-examination question asked of him: "you don't remember [Quinn] telling you she didn't love you?" Although defense counsel objected based on relevancy, the trial court permitted the question. The prosecutor's question did not deprive defendant of a fair trial. The evidence presented showed that defendant and Quinn were in a long-term relationship, and after their relationship ended, Quinn started dating Mack. The prosecutor inquired about a conversation that supposedly occurred, a day before the shooting,

between defendant and Quinn regarding Quinn not loving defendant anymore. The prosecutor's inquiry was not prejudicial because defendant denied that a conversation of that nature occurred, the prosecutor moved on and did not revisit the issue. When the prosecutor cross-examined defendant, evidence had already been presented showing that Quinn and defendant were no longer romantically involved and that defendant was jealous of Quinn's new relationship with Mack. Although the prosecutor's question sought to provide the jury with more recent evidence of defendant's jealousy, evidence had already been presented showing that defendant was jealous of Quinn's new relationship, which was likely the motive for defendant's shooting. Because the prosecutor's question did not deny defendant a fair trial, reversal is not warranted. *People v Watson*, 245 Mich App 572, 588; 629 NW2d 411 (2001).

In any event, the trial court instructed the jury that "the lawyers questions to witnesses are not evidence." The trial court instructed the jury to "only accept things the lawyers say that are supported by the evidence or by your own common sense and general knowledge." Accordingly, we conclude that defendant has failed to show that the prosecutor's question was unfairly prejudicial and denied him a fair trial.

Defendant further argues that the trial court improperly scored offense variable seven (OV 7), and departed from the sentencing guidelines' minimum range without substantial and compelling reasons. We disagree. We review the trial court's scoring of a sentencing variable for clear error. *People v Hicks*, 259 Mich App 518, 522; 675 NW2d 579 (2003).

Defendant argues that the trial court incorrectly scored OV 7 at 50 points. OV 7 takes into account aggravated physical abuse. OV 7 can be scored at 50 points if a victim was "treated with sadism, torture, or excessive brutality or conduct designed to substantially increase the fear and anxiety a victim suffered during the offense." MCL 777.37. The trial court did not err when it scored OV 7 at 50 points. "A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). The evidence was sufficient to show that defendant acted with excessive brutality, and that his actions were designed to substantially increase Mack's fear and anxiety. MCL 777.37. The evidence presented showed that Mack was shot three times. Defendant approached Mack at Mack's home and pointed a gun to his face. Defendant repeatedly stated, "I'm going to kill you, - - ." Although Mack tried to escape, defendant followed, keeping the gun pointed at Mack's face most of the time. Defendant shot Mack once in the palm, and continued to follow him with the gun pointed at his face. Mack constantly moved away, but defendant followed. Defendant then shot Mack in the calf and pointed the gun back at his face. Mack started throwing objects in his garage to deflect defendant from shooting him in the face. However, defendant continued to point the gun at Mack, and then shot him in the head.

The foregoing evidence supported the trial court's conclusion that defendant acted with excessive brutality and wanted to increase Mack's fear and anxiety during the shooting. Because the evidence supported the trial court's scoring, we find no error.

Defendant also claims that he is entitled to resentencing, because offense variable ten was improperly scored, and because the trial court improperly departed upward from the sentencing guidelines range without stating substantial and compelling reasons to do so. However, defendant fails to properly set forth an argument for these claims. Because "an appellant may

not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment [of an issue] with little or no citation of supporting authority,” these issues are waived. *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004).

Affirmed.

/s/ William C. Whitbeck

/s/ Kurtis T. Wilder

/s/ Stephen L. Borrello