

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRADLEY STEVEN CAREY,

Defendant-Appellant.

UNPUBLISHED

September 16, 2008

No. 279270

Oakland Circuit Court

LC No. 2006-211450-FH

Before: Whitbeck, P.J., and Bandstra and Donofrio, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for three counts of felonious assault, MCL 750.82, possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v), and four counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. Because the trial court did not abuse its discretion when it allowed a line of questioning briefly referencing defendant's involvement in a prior bank robbery for a limited purpose, we affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

This case stems from police execution of a search warrant at defendant's apartment. When police officers arrived at defendant's apartment to execute the search warrant, they saw someone peering at them from behind window blinds. Police forced entry into the apartment using a ram. Police testified that as they entered, they informed the occupants of their identity as police officers, and that they had a warrant to search the home. One officer saw defendant dive behind a love seat. At trial, officers testified that defendant then stood up with a gun and pointed it in the officers' direction. The officers told defendant to drop the gun as they moved into the apartment. One officer fired at defendant, striking him. Defendant was taken to the hospital for treatment. During a search of the apartment, the police discovered cocaine in a pill bottle in one of defendant's shirts in a closet.

Defendant maintained that he did not know that the persons were police officers when they entered his apartment. He claimed that he did not see any police identification on their assault uniforms, and, that while they told him to drop his gun, they did not verbally inform him of their identity.

Shortly before trial in this case, defendant was convicted of a bank robbery. Prior to trial, defense counsel moved to prevent the prosecutor from introducing evidence of this conviction,

arguing that the time for defendant's appeal had not yet run, and that the introduction of this conviction would have a chilling effect on defendant's ability to testify. The prosecution argued that defendant likely would refute the officers' version of the events, and that the prosecution would wish to impeach defendant's credibility with this conviction. After analyzing the conviction under MRE 609, the trial court found that because the prior conviction and the charged crimes in this case were both violent offenses, it would be more prejudicial than probative to allow the prosecution to introduce evidence of the prior conviction. However, defense counsel subsequently questioned a number of witnesses about defendant's stated defense that he thought the police officers were members of the Russian mafia, or other criminals, and that he was only trying to defend himself.¹ Prior to defendant's testimony, the prosecutor moved the court to revisit its earlier ruling, indicating that it wanted to offer an alternative theory to rebut defendant's defense; i.e., that defendant planned to fire at the officers because he thought they were looking for him for the purpose of arresting him for the unarmed robbery. The trial court agreed to allow the questioning about the prior conviction for this limited purpose.

During cross-examination, the prosecutor attempted to impeach defendant concerning his alleged belief that the police were criminals invading his home:

Q. You knew that police officers had something else in mind when they were— besides dope, right?

A. No.

Q. You were not aware of the fact that police officers might be looking at you for something else?

A. No.

Q. Like for a bank robbery maybe?

A. No.

Q. You have no idea about that?

A. No idea.

Defendant argues on appeal that the trial court improperly allowed the jury to consider defendant's prior bank robbery conviction. He maintains that his theft crime was only minimally probative of his credibility, and the trial court failed to undertake the requisite balancing test in MRE 609(a)(2)(B) before admitting this evidence.

We review a trial court's decision to admit evidence for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). A preliminary question of law regarding the

¹ Apparently, one of defendant's previous roommates was Russian, and was involved in various illegal activities, including manufacturing illegal immigration papers.

admissibility of evidence is reviewed de novo. *Id.* A trial court's decision concerning the scope of cross-examination is reviewed for an abuse of discretion. *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992). A court abuses its discretion when it chooses an outcome that lies outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

Contrary to defendant's contention, the fact that he was convicted of a bank robbery was not specifically admitted at trial. Thus, MRE 609 is not directly implicated here. It is also arguable whether the prosecutor's ambiguous question, and the defendant's minimal response, could have led the jury to believe that defendant actually committed a bank robbery. The trial court instructed the jury that the attorney's questions to witnesses were not evidence, which would appear to mitigate any implication that defendant had previously committed a bank robbery. Nevertheless, under MRE 404(b), evidence of other crimes, wrongs, or acts of a defendant can be admitted for reasons other than to prove a propensity to commit the instant offense. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998); MRE 404(b). Generally, to be admissible under MRE 404(b)(1), other acts evidence must (1) be offered for a proper purpose; (2) be relevant under MRE 402, as enforced through MRE 104(b); and (3) have probative value that is not substantially outweighed by the danger of unfair prejudice. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), mod 445 Mich 1205 (1994). Additionally, the trial court, upon request, shall provide a limiting instruction. *Id.* at 75.

To the extent the questions asked in the instant case implicated MRE 404(b), the evidence was properly admitted. The evidence was offered for a proper purpose and was highly relevant. Defendant's motivation for grabbing his gun, and his belief regarding the identity of the people entering his home, were central to his intent and his claim of self-defense. The fact that defendant might have known that the police were actively seeking him in connection with a bank robbery was directly relevant to his answers to the questions. Any prejudice that arose from the questions was outweighed by their probative value. In addition, the trial court provided a limiting instruction, albeit concerning defendant's much more prejudicial prior cocaine use, in which the court properly cautioned the jury that it could not use defendant's prior acts as propensity evidence. The trial court's decision to allow this line of questioning fell within the range of principled outcomes and thus did not constitute an abuse of discretion.

Affirmed.

/s/ William C. Whitbeck
/s/ Richard A. Bandstra
/s/ Pat M. Donofrio