

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ANDRE MARCEL ADAMS,

Defendant-Appellant.

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UNPUBLISHED

March 19, 2009

No. 278734

Wayne Circuit Court

LC No. 06-013652-01

Before: Jansen, P.J., and Borrello and Stephens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316(1)(a). He was sentenced to life in prison, and now appeals as of right. For the reasons set forth in this opinion, we affirm.

On the morning of April 15, 2006, Robert Armstrong was discovered by a neighbor facedown in bed with a “quarter or half-dollar sized” hole in the back of his head. When the police arrived they discovered that Armstrong was dead, they found blood spatters on the wall, headboard, and pillow. Next to the bed they discovered a foot-long Maglite flashlight with defendant’s fingerprints on the light bulb. Following an autopsy, the medical examiner determined that Armstrong had two blows to the back of his head, consistent with being hit by a heavy object such as the flashlight. The medical examiner opined that his death was from blunt force head trauma. Defendant told police that he and the victim had engaged in consensual intercourse, during which he had his arms around the victim’s neck. Defendant claimed that the victim passed out and he then left the victim’s trailer.

Defendant’s sole issue on appeal is that the trial court erred in allowing a witness to testify about being raped by defendant approximately two months earlier. The admission of evidence under MRE 404(b) is reviewed for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). A trial court abuses its discretion when it selects an outcome that falls outside the range of reasonable and principled outcomes. *People v Orr*, 275 Mich App 587, 588-589; 739 NW2d 385 (2007).

MRE 404(b)(1) provides as follows:

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 crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

In *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), the Court articulated a three prong test for evaluating the admissibility of evidence of prior crimes, wrongs, or acts: the evidence (1) must “be offered for a proper purpose under MRE 404(b)”; (2) must “be relevant under [MRE] 402 as enforced through [MRE] 104(b); and (3) must not have a probative value that is substantially outweighed by unfair prejudice. The admission of evidence under MRE 404(b) requires close scrutiny of the “logical relationship between the proffered evidence and the ultimate fact sought to be proven.” *Crawford, supra* at 388; see also *People v Sabin (After Remand)*, 463 Mich 43, 60; 614 NW2d 888 (2000). “Relevance is a relationship between the evidence and a material fact at issue that must be demonstrated by reasonable inferences that make a material fact at issue more probable or less probable than it would be without the evidence.” *Crawford, supra* at 387. Where the only relevance of the proposed evidence is to show the defendant’s character or the defendant’s propensity to commit the crime, the evidence must be excluded. *People v Knox*, 469 Mich 502, 510; 674 NW2d 366 (2004).

The State contends that the other acts testimony was “probative of both of defendant’s intent, as well as his similar sexual and violent motives and mode of operation.” Intent, motive, and modus operandi are all legitimate reasons for offering the evidence, *Sabin, supra* at 68-69; *VanderVliet, supra* at 65-66. The 404(b) evidence also contradicts defendant’s proffered theories that he did not cause death of defendant or that one of defendant’s in-laws had killed the victim.

Defendant argues that the other acts evidence was not sufficiently similar to the charged offense to be relevant under MRE 404(b). In *Sabin, supra* at 63, the Supreme Court held 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.” Under this rule, the jury “is asked to infer the existence of a common system and consider evidence that the defendant used that system in committing the charged act as proof that the charged act occurred.” *Id.* at 64 n 10. There are similarities between the details of the prior assault and the murder. Both victims had apparently consumed alcohol and both were alone with defendant at the time of the assaults. Further, defendant admitted to choking the murder victim during what he claimed was consensual sex. The other acts witness testified that defendant also choked him. There was a consistency between the brutality of both assaults and the injuries inflicted on both victims. In ruling on the motion to allow the other acts evidence, the court observed that the evidence “show[s] a certain uniqueness to this type of crime and this type of behavior and I think that that serves the purpose of logical relevancy that would allow the evidence to be admitted.” We concur with the trial court that the proffered evidence was offered for a proper purpose and was relevant pursuant to MRE 404(b)(1). Accordingly, the trial court did not abuse its discretion when it stated its basis for admission of the evidence.

The third prong of the MRE 404(b) analysis weighs the probative value of the evidence against its prejudicial effect pursuant to MRE 403. MRE 403 states:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Our Supreme Court in *Sabin, supra* at 58-59: stated:

“In *VanderVliet*, 444 Mich at 90-91, we encouraged trial courts to utilize a flexible approach for determining admissibility to facilitate the informed exercise of their discretion under MRE 403. We explained: The probative value of other acts evidence and its true potential for prejudice is often unclear until the proofs are actually presented. Other acts evidence relevant to elements technically at issue because of a not guilty plea may initially have only marginal probative value in comparison to the potential prejudice generated by the evidence. Where, for example, the real issue contested is whether the act was committed, and the prosecution’s claim is that the disputed issue of mens rea requires admission of other acts evidence in the case in chief, the trial court should defer the ruling on admissibility where the jury would be likely to determine criminal state of mind from the doing of the act, allowing admission in the case in chief only if the evidence of other acts meets the standards for admission as proof of actus reus. On the other hand, in some cases the cross-examination of witnesses in the case in chief may make it clear that the intent with which the act was committed is likely to be a matter of significant concern to the factfinder. The prosecutor should not be allowed to introduce other acts evidence only because it is technically relevant, nor should the defendant be allowed to interdict proofs that are highly probative of a truly contested issue. By waiting to determine the admissibility of other acts evidence relevant to an element only technically at issue, the trial court is able to forestall gamesmanship by the parties and insure the admission of evidence that possesses significant probative value. The ultimate goal is an enlightened basis for the trial court’s conclusion of relevance and for the attendant inquiry under MRE 403.

Thus, “Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury.” *Crawford, supra* at 398. Due to the fact that prior acts evidence has an inherent risk of confusion and misuse, “there is a heightened need for the careful application of the principles set forth in” MRE 403. *United States v Johnson*, 27 F3d 1186, 1193 (CA 6, 1994) (observation made with respect to FRE 403, which is identical to MRE 403 [MRE 403, Comments]).

As noted above, the other acts evidence presented in this case was relevant because it was offered to prove defendant’s motive, intent and modus operandi. As is the case with most 404(b)(1) evidence, some possible prejudice exists, *People v Magyar*, 250 Mich App 408, 416; 648 NW2d 215 (2002), however, we conclude that the significant probative value of this evidence was not “substantially outweighed by the danger of unfair prejudice.” *People v Starr*, 457 Mich 490, 498; 577 NW2d 673 (1998) (emphasis in original).

In *Sabin, supra* at 56, and reiterated in *Knox, supra* at 509, our Supreme Court stated that a fourth prong to consider when determining the admissibility of 404(b) is to consider that

“...the trial court, upon request, may provide a limiting instruction under MRE 105.” The trial court in this case clearly instructed the jury as to the limited purposes to which the other acts evidence could be considered when it stated:

I mentioned, touched on this during the course of trial when Mr. McDonald testified, but again, you’ve heard evidence that was introduced to show that the defendant committed a crime or improper acts for which he is not on trial. If you believe this evidence, you must be very careful to consider it for certain purposes. You may only think about whether this evidence tends to show that the defendant specifically meant to commit the crime or crimes charged, that the defendant acted purposefully, not by accident or mistake because he misjudged the situation; that the defendant used a plan, system, or characteristic scheme that he had not used before or since; and to decide who committed the crime that the defendant was charged with.

This clear instruction properly protected defendant’s right to a fair trial. See, *People v Smith*, 243 Mich App 657, 675; 625 NW2d 46 (2000), remanded on other grounds 465 Mich 928 (2001). Accordingly, we affirm defendant’s conviction and sentence.

Affirmed.

/s/ Kathleen Jansen  
/s/ Stephen L. Borrello  
/s/ Cynthia Diane Stephens