STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 25, 2009
v	No. 283239 Calhoun Circuit Court
JEFFREY GUY RINGLE, Defendant-Appellant.	LC No. 2007-002377-FC

Before: Zahra, P.J., and Whitbeck and M. J. Kelly, JJ.

PER CURIAM.

Defendant Jeffrey Ringle appeals as of right his jury trial convictions for first-degree murder,[1] felon in possession of a firearm,[2] carrying a concealed weapon (CCW),[3] and two counts of possession of a firearm during the commission of a felony (felony firearm).[4] The trial court sentenced Ringle as an habitual offender, third offense,[5] to life imprisonment for his first-degree murder conviction; 57 to 120 months' imprisonment for his felon-in-possession conviction; 57 to 120 months' imprisonment for his CCW conviction; and two years' imprisonment for each felony-firearm conviction.[6] We affirm Ringle's convictions, but remand for correction of Ringle's judgment of sentence as to the CCW conviction.

I. Basic Facts And Procedural History

Chris Arnett was killed on May 18, 2002, in CD's Party Store in Burlington, Michigan. Arnett owned the store, which was located on the first floor of a two-story building. According

[1] MCL 750.316(1)(a).

[2] MCL 750.224f.

[3] MCL 750.227.

[4] MCL 750.227b.

[5] MCL 769.11.

[6] Ringle was also charged with and convicted of felony murder, MCL 750.316(1)(b), armed robbery, MCL 750.529, and two additional counts of felony firearm, MCL 750.227b; however, those charges were vacated at sentencing.

to Michigan State Trooper Reinhard Pope, an expert in the area of firearms, Arnett was killed with a .357-caliber or .38-caliber handgun. According to Detective Guy Picketts, $203 was also stolen from the store.

Della Harris, Ringle's girlfriend, testified that she drove Ringle and her two sons to the party store on the day of the murder. That morning, Harris saw Ringle near the gun safe in their bedroom. Ringle then told her he wanted cigarettes and insisted on going to CD's Party Store. When they arrived at the store, Ringle went inside and returned shortly thereafter with a six-pack of beer. According to Harris, Ringle appeared to be in a hurry, hysterical, and nervous. He told Harris: "Let's get the f--- out of here." As Harris drove back to their home, Ringle repeatedly said: "I f---ed up. I f---ed up. I f---ed up, Della, I f---ed up." When Harris asked what he meant, Ringle responded by telling her "to shut the f--- up."

Once they reached their home, Ringle immediately went inside. When Harris entered the home, she saw that Ringle was in their bedroom, locking the gun safe. When she asked him what was wrong, he responded: "Just shut the f--- up." Later that day, Ringle told her that "he had gotten money from Chris [Arnett]." Eventually, Ringle also told her he shot Arnett. However, Harris explained that she did not come forward because Ringle told her "he would kill [her], he would kill [her] kids, and he would kill [her] family if [she] told anyone."

According to Harris, Ringle had physically and verbally abused her and her children on several occasions. She testified that "[t]here was more than one incident where [Ringle] would pull guns out on [her]" and threaten to kill her.

Harris also testified regarding her and Ringle's drug use. She stated that Ringle started using crack cocaine in 1996, and then moved on to other "narcotic pills," including OxyContin. Harris began using OxyContin in 1999. They obtained prescriptions for OxyContin from their physicians. In 2001, she and Ringle began to experience financial problems as a result of their drug use.

Ringle's friend, Dallas Blankenship, testified at the evidentiary hearing regarding an incident involving Ringle that took place within one week prior to the murder. Ringle went to Blankenship's residence unannounced and entered the residence. Blankenship heard the door open, and he soon saw Ringle holding Blankenship's toolbox. When Blankenship confronted him, Ringle began to cry and asked Blankenship for money and OxyContin. Ringle had a .357-caliber or a .44-caliber handgun with him at that time. Indeed, Blankenship also indicated that Ringle always carried a "Dirty Harry"[7] type revolver, either a .357-caliber or .44-caliber handgun.

Another of Ringle's friends, Mitchell Messer, testified that he purchased OxyContin from Ringle on four or five occasions. He also testified that, on another occasion, Ringle told him that he had robbed the party store and "wasted a guy." Ringle claimed he had robbed other small

[7] Blankenship was apparently referring to Clint Eastwood's "Dirty Harry" movie character, who used a .44 Magnum.

businesses and that he once used a .357 Magnum to beat someone. Ringle then suggested that he and Messer rob several small businesses together.

II. Motion For Mistrial

A. Standard Of Review

Ringle argues that the trial court abused its discretion by denying his motion for mistrial based on a police witness's alleged reference to Ringle's post-*Miranda*[8] silence. We review a trial court's ruling on a motion for mistrial for an abuse of discretion.[9] "[A]n abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome."[10]

B. Witness's Unresponsive Answer

A trial court should only grant a mistrial when an irregularity occurs that prejudices the rights of the defendant and impairs his ability to get a fair trial.[11] The Michigan Supreme Court has held that a defendant's silence at the time of arrest and after receiving *Miranda* warnings is not admissible for impeachment purposes.[12] And police officers have a special obligation not to venture into forbidden areas that may prejudice the defense.[13] However, the constitutional preclusion of evidence of the defendant's silence does not extend to a brief and oblique reference.[14] Furthermore, an unresponsive, volunteered answer that injects improper evidence into a trial is generally not a ground for a mistrial unless the prosecutor knew in advance that the witness would give the unresponsive testimony or the prosecutor conspired with or encouraged the witness to give that testimony.[15]

Here, the police witness testified at trial regarding Ringle's statements to the police after he was advised of his *Miranda* rights. The following colloquy then took place:

> *Q*. And is that the extent of your conversation with the defendant on that date?
>
> *A*. Yeah, shortly after that he stated that—

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[8] *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

[9] *People v Dennis*, 464 Mich 567, 572; 628 NW2d 502 (2001).

[10] *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

[11] *People v Haywood*, 209 Mich App 217, 228; 530 NW2d 497 (1995).

[12] *People v Boyd*, 470 Mich 363, 374-375; 682 NW2d 459 (2004).

[13] *People v Holly*, 129 Mich App 405, 415-416; 341 NW2d 823 (1983).

[14] See *Dennis*, *supra* at 576-581.

[15] *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990); *Haywood*, *supra* at 228.

Q. Ah—

A. Okay.

Q. 'Cause he has the right not to talk to you?

A. Yes, absolutely.

Q. Okay. And that's what happened?

A. Yes.

Q. Okay, but you understand that that's his absolute right, he can—

A. Absolutely.

This exchange suggests that the prosecutor was not inquiring into Ringle's post-*Miranda* silence, but was merely attempting to elicit a close-ended response from the police witness regarding whether the interview with Ringle had concluded. While the prosecution made general, clarifying comments that a defendant does not have to speak to police, there was no testimony that Ringle invoked his right to silence in this case. Finally, because the trial court instructed the jury that attorneys' statements or questions are not evidence, and because juries are generally presumed to have followed the instructions,[16] there could be no error where such a curative instruction prevented any prejudicial effect.

Ultimately, we conclude that the single question and somewhat unresponsive testimony did not rise to the level of an inadvertent inquiry into Ringle's post-*Miranda* silence. There was no irregularity in the trial that prejudiced Ringle or impaired his ability to get a fair trial. Therefore, the trial court did not abuse its discretion in denying Ringle's motion for mistrial.

III. Admission Of Evidence

A. Standard Of Review

Ringle claims that he is entitled to a new trial because the trial court made several erroneous admissions of improper bad-acts evidence. We review the admission of evidence for an abuse of discretion.[17] Error in the admission of bad acts evidence does not require reversal unless it affirmatively appears that it is more probable than not that the error was outcome determinative. The defendant bears the burden of establishing that, more probably than not, a

[16] *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998).

[17] *People v Johnson*, 474 Mich 96, 99; 712 NW2d 703 (2006).

miscarriage of justice occurred.[18] We review de novo evidentiary issues that are based on preliminary questions of law.[19]

B. MRE 404(b)

Although evidence of misconduct similar to that charged is logically relevant to show that the charged act occurred,[20] "evidence of other crimes, wrongs, or acts of an individual is [generally] inadmissible to prove a *propensity* to commit such acts"[21] Thus, under MRE 404(b), such evidence is only 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."[22] The list of exceptions in MRE 404(b) is nonexclusive.[23]

Generally, bad acts evidence is admissible under MRE 404(b) if (1) it is offered for a proper purpose, (2) it is relevant, and (3) its probative value is not substantially outweighed by its potential for unfair prejudice.[24] Under MRE 404(b), a prosecutor must also provide reasonable notice of his intent to present such evidence.[25]

Here, the prosecution properly filed a notice of intent to use evidence of Ringle's other crimes, wrongs, or acts. However, Ringle argues that the trial court abused its discretion when it admitted allegedly improper character or propensity evidence that Ringle (1) was addicted to OxyContin before and after the instant homicide; (2) entered Blankenship's residence to rob him while brandishing a weapon; (3) asked Messer if he wanted to rob convenience stores or gas stations; (4) told Messer that he pistol-whipped another individual with a .357 Magnum; and (5) physically and verbally abused Harris and her sons.

First, the prosecution presented evidence of Ringle's drug use in connection with his financial difficulties, and in the context of Ringle's relationship with other witnesses. Evidence that Ringle's drug use was the cause of his financial difficulties was relevant to prove Ringle's motive to commit the robbery during which the murder took place. Furthermore, the evidence was necessary to give the jury an intelligible presentation of the full context in which the criminal activity took place.[26] Therefore, evidence of and references to Ringle's drug use were

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[18] *People v Knapp*, 244 Mich App 361, 378; 624 NW2d 227 (2001).

[19] *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003).

[20] MRE 401.

[21] *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998) (emphasis added).

[22] MRE 404(b)(1).

[23] *People v Engelman*, 434 Mich 204, 212; 453 NW2d 656 (1990).

[24] *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004).

[25] MRE 404(b)(2).

[26] *People v Sholl*, 453 Mich 730, 742; 556 NW2d 851 (1996).

relevant and properly admitted under MRE 404(b) to demonstrate Ringle's motive to commit the charged offenses.

Second, Blankenship testified regarding the incident in which Ringle may have been attempting to rob him. Contrary to Ringle's characterization, Blankenship's testimony does not demonstrate that Ringle was attempting to rob Blankenship. There is a reasonable inference that that may have occurred; however, the record also provided that, according to Blankenship, Ringle had permission to enter Blankenship's residence at any time; that Ringle set down the toolbox after Blankenship confronted him; and that Ringle never threatened or assaulted Blankenship. However, even if we interpret the testimony to demonstrate that Ringle was attempting to rob Blankenship, the evidence would still be admissible. The evidence was relevant and properly offered under MRE 404(b) to demonstrate both motive for the robbery and identity with regard to the weapon Ringle was carrying.

Third, Messer testified regarding Ringle's statements about robbing convenience stores and gas stations. According to Messer, Ringle suggested they rob several small businesses together. This evidence was relevant and properly admitted under MRE 404(b) as a statement of Ringle's general intent, or as evidence of a common plan or scheme to rob small businesses such as the one in which the instant robbery and murder took place.

Fourth, Messer also testified regarding Ringle's statement that he pistol-whipped another individual with a .357 Magnum. This evidence, like Blankenship's description of the weapon he observed in Ringle's possession, is relevant to establishing the murderer's identity and is therefore also admissible under MRE 404(b).

Finally, Harris's testimony that Ringle verbally and physically abused her and her sons corroborated her fear of Ringle, and explained why she did not disclose Ringle's involvement in the instant homicide to the police. The evidence was essential to the prosecution's ability to rebut a defense of fabrication and to Harris's credibility as a witness. Therefore, Harris's testimony was relevant and offered for a proper purpose under MRE 404(b).

In conclusion, none of the challenged evidence was aimed at proving Ringle's propensity to commit the charged crimes, which is the prohibited purpose underlying MRE 404(b).[27] The probative value of the evidence was not substantially outweighed by the danger of unfair prejudice, as the record does not demonstrate that the jury gave this evidence undue or preemptive weight, or that the evidence confused the jury.[28] Therefore, the trial court did not abuse its discretion in admitting the challenged evidence.

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[27] *People v Hawkins*, 245 Mich App 439, 450; 628 NW2d 105 (2001).

[28] *People v Mills*, 450 Mich 61, 75-76; 537 NW2d 909 (1995).

IV. Sentencing

A. Standard Of Review

Ringle argues that the trial court erroneously ordered his sentences for felony firearm to run consecutively to his sentence for CCW.

This issue was not preserved, and we review unpreserved sentencing errors for plain error affecting substantial rights.[29] "[A] constitutional right may be forfeited by a party's failure to timely assert that right."[30] There are three requirements to avoid forfeiture: "1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights."[31] Even if a defendant establishes these requirements, we may reverse "only when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error 'seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings' independent of the defendant's innocence'"[32]

B. Predicate Felony

A felony-firearm sentence may run consecutively only to its predicate felony.[33] Under MCL 750.227b, CCW is not a predicate felony for felony firearm.[34] Therefore, a sentence for felony firearm may not run consecutively to a sentence imposed for CCW.

Here, the trial court erroneously ordered Ringle's felony-firearm sentences to run consecutively to his CCW sentence. Therefore, we remand this case for the amendment of Ringle's sentence to reflect that the CCW sentence is concurrent with the felony-firearm sentences.

We affirm Ringle's convictions, but we remand for correction of the judgment of sentence. We do not retain jurisdiction.

/s/ Brian K. Zahra
/s/ William C. Whitbeck
/s/ Michael J. Kelly

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[29] *People v Kimble*, 252 Mich App 269, 276; 651 NW2d 798 (2002).

[30] *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

[31] *Id.*

[32] *Id.* (citation omitted).

[33] *People v Cortez*, 206 Mich App 204, 207; 520 NW2d 693 (1994).

[34] MCL 750.227b.