STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 21, 2010
v MARY CLARE LEE, Defendant-Appellant.	No. 294136 Wayne Circuit Court LC No. 08-002778-FH

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	
v MARY CLARE LEE, Defendant-Appellant.	No. 294137 Wayne Circuit Court LC No. 08-019492-FH

Before: MURRAY, P.J., and K.F. KELLY and DONOFRIO, JJ.

PER CURIAM.

In these consolidated appeals, defendant appeals as of right her jury trial convictions of aggravated stalking, MCL 750.411i, and third-degree fleeing and eluding, MCL 257.602a(3)(a). For both convictions, defendant was ordered to serve concurrent jail sentences of 9 months followed by five years' probation, the terms of which required mental health treatment, no contact with the complainants, a GPS tether, barred entry to the University of Michigan-Dearborn campus with permission to enroll only in online courses, "random and unannounced home vists to check computers," and restitution for motor vehicle damage. We affirm.

I. FACTS

This case arises out of defendant's four-year-long stalking and harassment of Liana and her husband, Richard McMillan. Liana McMillan was defendant's German language instructor at the University of Michigan-Dearborn (UMD). Defendant first enrolled in Ms. McMillan's classes in the fall of 2003 and admitted at trial to having a sexual attraction towards the instructor. Ms. McMillan, however, was not aware of this attraction until the fall semester of

2004, when defendant wrote an essay, in German, expressing defendant's love and sexual desires for Ms. McMillan. After reporting defendant's essay to her superior, Ms. McMillan began receiving "dozens" of emails from defendant questioning why defendant was not removed from the class, indicating defendant's shame and embarrassment over the essay, and expressing her feeling of betrayal by Ms. McMillan. Notably, the emails persisted over Ms. McMillan's request that they stop. Along these same lines, defendant also informed Ms. McMillan that she would listen to recordings of Ms. McMillan's lectures "many, many hours every day" and that Ms. McMillan's voice was "the last thing [defendant] hears at night."

In the fall semester of 2005, the intensity of defendant's interaction with Ms. McMillan escalated. Specifically, defendant attempted to enroll in both Ms. McMillan's German 201 class (despite having passed this class with an "A" the prior year) and German 301 class, but was denied permission by the University; defendant passed Ms. McMillan in the hallway and "gave her the finger" in front of other students;[1] defendant sent an email to Ms. McMillan and later to University officials alleging a sexual affair between Ms. McMillan and a male student; and campus security removed defendant from the UMD library after Ms. McMillan reported that defendant was videotaping her with other students and following them throughout the library. As a consequence of these events, Ms. McMillan obtained a PPO against defendant in October, and following a formal hearing at UMD in December, defendant was expelled and barred from returning to campus.

Despite the PPO and the expulsion, and even though additional PPOs were obtained against defendant, defendant persisted in her contacts with the McMillans for the next three years. On this score, the McMillans testified that defendant would often drive by and look into their house from her car late at night and would additionally follow Ms. McMillan as she ran errands and commuted to UMD. On one occasion, Ms. McMillan spotted defendant on UMD's campus and unsuccessfully attempted to detain her until security arrived. Also, Ms. McMillan received a number of lewd and threatening emails from email addresses containing defendant's name.

During this same time period, the McMillans began receiving a series of phone calls from numbers they did not recognize and/or blocked numbers.[2] Although the caller would often hang up when the phone was answered, the McMillans explained that on other occasions they recognized the caller's voice as defendant's—including when she impersonated a Farmington Hills police detective, identified herself as an "old friend," identified herself as a private investigator investigating "illicit" conduct, and when she left messages indicating, "I knew she walked home" or "she walked home today." Also, Mr. McMillan recounted that he received a

[1] Regarding this incident, defendant claimed Ms. McMillan was embracing and kissing another student, however, other students and Ms. McMillan testified that such interaction was typical of Ms. McMillan's European custom of greeting.

[2] Notably, the McMillans later discovered that many of the calls originated from public payphones located at gas stations near their house, and on one occasion, Mr. McMillan observed a vehicle that appeared to be the same make and model as defendant's car near one of these gas stations moments after he received a suspicious phone call.

series of voice messages left by an unidentified woman, text messages purportedly from a male student in his wife's class, and two notes left on his car's windshield overnight—all recounting lewd sexual acts between his wife and a UMD student.[3]

The phone calls, text messages, and defendant's surveillance of Ms. McMillan and the McMillans' house persisted until December 8, 2008, when defendant was arrested following her car accident during a high-speed chase with police. The chase was precipitated by defendant's failure to pull over after a Dearborn police officer observed defendant drive past the McMillans' house and commit a traffic infraction. At the ensuing trial, defendant denied stalking Ms. McMillan or making any phone calls, leaving text or voice messages, sending obscene emails, or being involved in a high-speed chase with police, but admitted to attaching the sexual essay to a homework assignment albeit accidentally. A jury subsequently convicted defendant of the aforementioned offenses, and the instant appeal followed.

II. ANALYSIS

On appeal, defendant argues that reversal is warranted because the court admitted evidence that was irrelevant and in violation of MRE 403 and 404(b). Because defendant failed to challenge any of the alleged errors below, our review is for plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). "Under the Michigan Rules of Evidence, evidence is admissible only if it is relevant as defined by MRE 401 and is not otherwise excluded under MRE 403." *People v Feezel*, 486 Mich 184, 197; 783 NW2d 67 (2010) (opinion by CAVANAGH, J.). To be relevant, evidence must be material and have probative value; in other words, the evidence must be related to a fact of consequence and have a tendency to make that fact more or less probable than it would be without the evidence. *Id*.; MRE 401. The threshold of admissibility in this respect is minimal: "'*any*' *tendency is sufficient probative force*." *People v Crawford*, 458 Mich 376, 390; 582 NW2d 785 (1998) (emphasis supplied).

On the issue of relevancy, defendant claims the following evidence was admitted in error: (1) Mr. McMillan's testimony that he received a text message purportedly from Dayne Johnson, a student, indicating his wife was having "wild sex" with him; (2) Mr. McMillan's testimony that he received three calls on October 31, 2007, from blocked or private numbers; and (3) the McMillans' testimony that they received calls from numbers they did not recognize. We find that each of these instances easily surpassed the relevancy threshold of admissibility—especially when considered in light of the other evidence admitted at trial.

Specifically, the prosecution presented evidence that prior to Mr. McMillan receiving the "wild sex" text message, defendant—who admitted to having sexual desires towards and feelings of betrayal by Ms. McMillan—had contacted Mr. McMillan to discuss an "illicit" relationship. Sometime after receiving the text message, Mr. McMillan found two obscene notes regarding his wife left on his car's windshield in the middle of the night. Notably, these events occurred during the time period when the McMillans noticed defendant routinely surveilling their house

[3] Ms. McMillan denied ever engaging in any of these alleged affairs.

late at night and when they had been receiving a number of suspicious calls during which either the number was blocked, the caller hung up, or they recognized defendant's voice—sometimes impersonating another identity. Regarding these calls, it is noteworthy that a number of them originated from gas stations near the McMillans' home and Mr. McMillan had once observed defendant's car near one of these gas stations just after he received a suspicious phone call. Furthermore, the McMillans had never received suspicious phone calls until defendant began calling and surveilling them. Thus, when considered in light of the foregoing, the challenged evidence makes it more likely that defendant repeatedly engaged in a pattern of behavior resulting in both objective and subjective terrorization, fear, and intimidation, i.e., elements of aggravated stalking. MCL 750.411i. And as "the elements of the offense are always 'in issue' and, thus, material[,]" *Crawford*, 458 Mich at 389, defendant's claim that the evidence at issue was irrelevant is entirely unsustainable.

Nor do we find that the admission of this evidence (as well as Ms. McMillan's claim she did not receive calls from pay phones prior to defendant's calls and evidence that defendant was expelled from school following a hearing) unfairly prejudicial under MRE 403. Indeed, such information would hardly induce feelings of anger, shock, or sympathy in the jurors. *People v Goree*, 132 Mich App 693, 702-703; 349 NW2d 220 (1984). See also *People v Mills*, 450 Mich 61, 75-76; 537 NW2d 909 (1995), modified 450 Mich 1212 (1995). And while the text message to Mr. McMillan was lewd and offensive, its admission did not cause unfair prejudice where the text was only the tip of the iceberg of the overtly sexual references received by the McMillans and linked circumstantially and directly to defendant.

We also reject defendant's claim that reversal is warranted because evidence was admitted in violation of MRE 404(b).[4] For starters, defendant's writing on her final examination that Ms. McMillan's class was a waste of time was a statement and not an act, and therefore does not fall within the ambit of MRE 404(b). *People v Rushlow*, 179 Mich App 172, 176; 445 NW2d 222 (1989), aff'd 437 Mich 149 (1991); see also *People v Goddard*, 429 Mich 505, 518; 418 NW2d 881 (1988). Additionally, evidence that defendant followed Ms. McMillan near her home and around campus and that defendant called both Mr. and Ms. McMillan prior to May 19, 2008, i.e., prior to the period when the stalking was alleged in the felony information, tends to show defendant's scheme, plan or systematic stalking of Ms. McMillan and is certainly relevant to whether defendant stalked Ms. McMillan during the time period alleged. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993). And as before, this scheme, plan, or

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[4] 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.

system was devoid of any shocking sexual or even gruesome details that would unfairly prejudice a jury. *Id*.

However, we are hard pressed to find the evidence that defendant attempted to obtain a PPO against a police officer and that she removed her notes from a mediation session (pertaining to a PPO obtained against her by one of Ms. McMillan's students) was admitted for proper purposes under MRE 404(b). *Id*. Indeed, such evidence goes to neither scheme nor plan nor system as the aforementioned evidence tends to show. Nevertheless, given the overwhelming amount of evidence implicating defendant in this case, any error was harmless and was not outcome determinative. *Carines*, 460 Mich at 763; *People v Whittaker*, 465 Mich 422, 427; 635 NW2d 687 (2001).

Affirmed.

/s/ Christopher M. Murray
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio