

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DENNIS JOHN HAHN,

Defendant-Appellant.

UNPUBLISHED

May 17, 2012

No. 298909

Gogebic Circuit Court

LC No. 10-000016-FH

Before: MARKEY, P.J., and BECKERING and M. J. KELLY, JJ.

PER CURIAM.

Defendant Dennis John Hahn appeals by right his jury convictions of arson of personal property valued between \$1,000 and \$20,000, MCL 750.74(1)(c)(i), breaking and entering a motor vehicle with damage to the vehicle, MCL 750.356a(3), and receiving and concealing stolen property valued between \$1,000 and \$20,000, MCL 750.535(3)(a). The trial court sentenced him as a second habitual offender to serve concurrent terms of 47 months to 7 ½ years in prison for each conviction. Because we conclude that there were no errors warranting relief, we affirm.

Evidence showed that, in November 2009, defendant and two other individuals broke into a parked car near Ironwood, Michigan, and stole approximately \$300 worth of miscellaneous goods. Later in the day, the three men returned to the car and defendant set it on fire using a gasoline-soaked rag. That night, defendant led the group to a job site in Iron Belt, Wisconsin, and proceeded to steal his former employer's diesel generator.

Defendant first argues that the trial court erred in scoring Offense Variable (OV) 13 at 25. Specifically, he argues that arson of personal property and arson of a dwelling house should not be considered "crimes against a person" for purposes of establishing a "pattern of felonious criminal activity involving 3 or more crimes against a person" under MCL 777.43(1)(c).

We review the trial court's findings underlying the scoring of an offense variable for clear error. *People v Witherspoon*, 257 Mich App 329, 335; 670 NW2d 434 (2003). This Court reviews de novo the proper interpretation of the sentencing guidelines. *People v Babcock*, 469 Mich 247, 253; 666 NW2d 231 (2003).

For purposes of scoring OV 13, offenses are classified according to categories found in MCL 777.5 and MCL 777.11 to 777.19. *People v Bonilla-Machado*, 489 Mich 412, 426-427; 803 NW2d 217 (2011). Both arson of personal property valued \$1,000 to \$20,000 and arson of a dwelling house are categorized as “person” offenses. MCL 777.16c. Therefore, they were properly classified as “crimes against a person” for purposes of scoring OV 13. MCL 777.43(1)(c); *Bonilla-Machado*, 489 Mich at 426-427.

Defendant next argues that the trial court erred when it allowed evidence that he had committed a separate arson involving a mobile home for purposes of proving his intent and identity. He further claims that this evidence prejudiced his trial. We review the trial court’s determination as to the admissibility of evidence for an abuse of discretion. *People v Gursky*, 486 Mich 596, 606; 786 NW2d 579 (2010).

Evidence that a defendant has committed other acts is inadmissible to prove that the defendant has bad character and that he or she acted in conformity with that character. MRE 404(b)(1). However, other acts evidence may be admissible for purposes other than to prove character and action in conformity with character, such as to prove the defendant’s intent or identity. *Id.*; see also *People v Roper*, 286 Mich App 77, 91; 777 NW2d 483 (2009) (noting that the rules of evidence strictly limit the circumstances under which evidence of character—including other acts evidence tending to implicate character—may be used). To be admissible under MRE 404(b)(1), the evidence must be “logically relevant to a material fact in the case...and is *not* simply evidence of the defendant’s character or relevant to his propensity to act in conformance with his character.” *People v Mardlin*, 487 Mich 609, 615; 790 NW2d 607 (2010).

The evidence concerning the other arson was not admissible to show identity. In order for other acts evidence to be admissible to prove identity, the other act must have some special quality that tends to prove the defendant’s identity—that is, the other act must have some unique component—a signature component—that is so similar to one used in the crime at issue that the jury could reasonably conclude that they must have been committed by the same person. *People v Golochowicz*, 413 Mich 298, 309-312; 319 NW2d 518 (1982) (stating that it is not enough that the defendant committed crimes of the same class; there must be commonality of the circumstances that are so unusual and distinctive as to be like a signature). Here, there was nothing so unique about the commissions of the arsons that a reasonable jury could conclude that the arsons must have been committed by the same person. Therefore, the trial court abused its discretion when it permitted the introduction of the other arson to prove identity.

The evidence that defendant committed a separate arson was, however, probative of his intent when setting the car at issue on fire. See *People v VanderVliet*, 444 Mich 52, 79-80; 508 NW2d 114 (1993). Nevertheless, there was no evidence that defendant mistakenly or accidentally started the fire. Indeed, it was undisputed that the fire was intentionally set; defendant’s theory was simply that he was not involved. Given the parties’ theories and the actual evidence, see *id.* at 75, whatever minimal probative value the evidence of the other arson might have had was arguably outweighed by the danger that the jury would use it for an improper purpose. See MRE 403; *Roper*, 286 Mich App at 91. Nevertheless, even if we were to conclude that the trial court erred when it permitted the admission of evidence that defendant committed another arson, any error would not warrant relief. There was overwhelming evidence

that defendant committed the charged crimes. As such, any error in the admission of this evidence was harmless. *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999).

Finally, defendant argues that the trial judge improperly instructed the jury with regard to the other acts evidence. Because we have already determined that any error in the admission of this evidence was harmless, even if the trial court's instruction was also in error, that error would not amount to plain error warranting relief. See *People v Gonzalez*, 256 Mich App 212, 225; 663 NW2d 499 (2003).

There were no errors warranting relief.

Affirmed.

/s/ Jane E. Markey
/s/ Jane M. Beckering
/s/ Michael J. Kelly