

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM HOURL NORRIS,

Defendant-Appellant.

UNPUBLISHED

March 16, 1999

No. 206326

Clinton Circuit Court

LC No. 96-006169 FH

Before: Jansen, P.J., and Sawyer and Markman, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions by a jury of two counts of larceny in excess of \$100, MCL 750.356a; MSA 28.588(1). The trial court sentenced defendant to twelve to twenty years' imprisonment as a fourth habitual offender, MCL 769.12; MSA 28.1084. We affirm.

This case arises out the apparent theft of low-boy construction trailer and a tractor that was loaded on the trailer. The incident occurred on June 26, 1996 at approximately 3:00 a.m. when defendant and another man drove off with the loaded trailer. Defendant claimed that he had no knowledge that these items were being stolen and that he had no intent to steal them. Rather, defendant claimed that another man asked him to perform some loading work. In order to rebut defendant's claim, the prosecution successfully introduced evidence of two of defendant's prior convictions also involving larceny of heavy duty equipment.

Defendant's sole argument is that the trial court erred when it admitted evidence of two of his prior convictions of larceny in excess of \$100. The decision whether such evidence is admissible is reviewed for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). In order to be properly admitted under MRE 404(b), the evidence must be offered for a proper purpose, must be relevant, must have probative value that is not substantially outweighed by unfair prejudice, and the trial court may, upon request, provide a limiting instruction to the jury. *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993).

Defendant maintains that the prosecutor's asserted purpose in seeking admission of the prior conviction was merely a thinly disguised "character-to-conduct" argument; that is, because defendant

had done this crime before, he was more likely to have done it again this time. However, when a defendant puts forth a general denial of guilt, all elements of a charged offense are at issue. *People v Mills*, 450 Mich 61, 69-70; 537 NW2d 909 (1995). Felonious intent is an element of the crime of larceny in excess of \$100, and defendant's theory was that he had been legitimately hired to help with loading, but that he had no idea that the equipment was being stolen. Because defendant's intent was at issue, the evidence was properly admitted for the limited "noncharacter" purposes of showing defendant's intent and lack of mistake. MRE 404(b)(1).

Defendant also argues that his prior convictions were not relevant to the asserted purpose for which they were admitted. When a prosecutor offers evidence of prior criminal acts for a proper purpose under MRE 404(b), the "logical relationship between the proffered evidence and the ultimate fact sought to be proven must be closely scrutinized." *Crawford, supra* at 388. Relevant evidence must be material--logically relevant to an issue or fact of consequence--and probative--having a tendency to prove that issue or fact. *People v Starr*, 457 Mich 490, 497-498; 577 NW2d 673 (1998). We conclude that there was a sufficiently close factual nexus, *Crawford, supra* at 396, between defendant's prior crimes and the charged offense. Defendant claimed that his involvement with moving the equipment was purely innocent, whereas the prosecution argued that defendant had the necessary intent. The prior crimes evidence makes defendant's argument less probable: someone with previous experience in stolen goods would be more likely to suspect criminal activity when invited to perform loading work at 3:00 a.m. Contrary to defendant's argument, in order to be relevant, the evidence need not "*prove* absence of mistake," nor must it "*demonstrate* his intent"; rather, it must merely have a tendency to prove or disprove his assertions. Accordingly, the evidence was both material and had probative value.

Further, the probative value of the prior crimes evidence was not substantially outweighed by any unfair prejudice to defendant. "Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury." *Id.* at 398. In this case, the only inference that the jury needed to draw from the evidence of prior crimes was the element of intent, or absence of mistake. Defendant's involvement with the stolen equipment on the day in question was clearly established by other evidence. The evidence of his prior crimes merely addressed the issue whether his actions were performed in total ignorance of the stolen nature of the vehicles.

Finally, we note that the trial court gave a proper limiting instruction to the jury concerning this evidence, thereby offsetting any prejudicial effect of the evidence. *Id.* at 385.

Affirmed.

/s/ Kathleen Jansen
/s/ David H. Sawyer
/s/ Stephen J. Markman