STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

MARTIN MICHAEL EDWARDS,

Defendant-Appellee.

UNPUBLISHED
May 28, 1999

No. 213398
Dickinson Circuit Court
LC No. 97-002104 FH

Before: Whitbeck, P.J., and Markman and O'Connell, JJ.

PER CURIAM.

The prosecutor appeals by leave granted an order denying his motion in limine to admit evidence of defendant's prior acts at trial. We affirm.

The prosecutor charged defendant with three counts of assault with a dangerous weapon, MCL 750.82; MSA 28.277, and one count of malicious destruction of personal property over $100, MCL 750.377a; MSA 28.609(1), after defendant allegedly used his truck to ram another vehicle with three occupants which he believed had been trespassing upon his property. The lower court denied the prosecutor's motion to introduce evidence that, in California in 1993, defendant allegedly used a vehicle to ram his former daughter-in-law's car during a custody dispute between her and defendant's son. The prosecutor contends that the trial court erred by failing to recognize the probative value of this 'other acts' evidence and by applying an incorrect balancing test to weigh its probative value against the risk of unfair prejudice to defendant.

We review a lower court's decision to exclude evidence of 'other acts' for an abuse of discretion. *People v Rockwell*, 188 Mich App 405, 410; 470 NW2d 673 (1991). A trial court abuses its discretion when "an unprejudiced person, considering the facts upon which the court acted, would say there was no justification or excuse for the ruling." *People v Orzame*, 224 Mich App 551, 557; 570 NW2d 118 (1997).

The trial court here did not abuse its discretion, in our judgment, by excluding the 'other acts' evidence. A trial court may exclude even relevant evidence if it would be unduly confusing, an undue

waste time, or "if its probative value is substantially outweighed by the danger of unfair prejudice." MRE 403. With regard to the balancing test under MRE 403, the trial court said,

> Now, I acknowledged earlier that I know something about the evidence that Mr. Sartorelli wants introduced. And that occurred during the course of a custody dispute. And it involved, not primarily this Defendant, but this Defendant's son and the woman that you now want to call in evidence. And it seems to this Court that that evidence would be highly prejudicial to this case and would vastly open the door as to what evidence should be introduced in this case. Because if that evidence can come in as to what this Defendant, what role he played in those acts and certainly, I guess, the whole custody dispute is – is back before the Court and we'll spend two more days hearing that. *Seems to me that it is not economical of the judicial system and that the prejudicial effect of allowing it in far outweighs the probative value.* I am satisfied that it would be inappropriate to allow that evidence into this case. [Emphasis added.]

This analysis by the court addressed the factors identified in MRE 403. The trial court found that the balance significantly tipped in favor of excluding the evidence because its probative value, if any, was relatively low in light of its potential prejudicial value.

In support of the probative value of the evidence, the prosecutor argues that the California collision is relevant to five of the proper purposes outlined in the 'other acts' provisions of MRE 404(b): intent, absence of mistake or accident, scheme, plan, or system. He also argues that the evidence is admissible to rebut a possible defense theory of fabrication.

The Supreme Court's recent opinion in *People v Crawford*, 458 Mich 376, 387; 582 NW2d 785 (1998), states:

> Mechanical recitation of "knowledge, intent, absence of mistake, etc.," without explaining how the evidence relates to the recited purposes, is insufficient to justify admission under MRE 404(b). If it were, the prosecutor could routinely admit character evidence by simply calling it something else. Relevance is not an inherent characteristic, nor are prior bad acts intrinsically relevant to "motive, opportunity, intent, preparation, plan," etc. 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. In order to ensure the defendant's right to a fair trial, courts must vigilantly weed out character evidence that is disguised as something else. The logical relationship between the proffered evidence and the ultimate fact sought to be proven must be closely scrutinized. [*Id*., at 387-388 (citations omitted).]

It is unclear to this Court how the evidence in controversy, part of a custody dispute four years earlier, would tend at all to prove that defendant intended to assault his three accusers or damage their truck four years later for trespassing. This is not a case in which there is any sort of continuing conduct or relationship between the same parties from which this Court might ordinarily assume that a prior act

by a defendant is relevant to prove the intent to commit a similar offense against the same victim. See, for example, *People v Biggs*, 202 Mich App 450, 452-53; 509 NW2d 803 (1993). Nor is this a case in which the evidence logically demonstrates any of the factors related to intent, such as premeditation or motive. See, for example, *People v Burgess*, 153 Mich App 715, 722-25; 396 NW2d 814 (1986). As the lower court observed, defendant's specific actions of allegedly throwing tools at the truck, threatening the young men's lives, and chasing after them is the primary evidence of his intent in this case. Further, we do not see that the issue of defendant's intent is seriously contested. If, as defendant contends, he was not present at the scene, his intent is not a significant issue; concomitantly, if, as the prosecutor contends, defendant repeatedly rammed into the truck, his intent again is not a significant issue in this case.

The prosecutor further argues that the evidence is relevant to show a scheme, plan, or system. However, the proffered evidence does not seem to fit the scheme, plan, or system exception in MRE 404(b). The prosecutor is not asserting this evidence in order to show that defendant was the perpetrator in this instance. Rather, he essentially asserts that defendant must have had the same *state of mind* when he allegedly used his vehicle to ram his former daughter-in-law's car and when he rammed the truck in the instant case. However, the prosecutor has failed to provide any sort of linkage or connection between the two collisions which would illustrate defendant's state of mind during the course of the instant collision. Further, even if the prosecutor *were* attempting to show identity, the scheme, plan, or system exceptions are typically relevant when the evidence surrounding the charged offense and the other act show that the perpetrator had a particular modus operandi. *People v VanderVliet*, 444 Mich 52, at 66, n 16; 508 NW2d 114 (1993), modified 445 Mich 1205 (1994). Unique or signature elements of two different occurrences may often help to identify a perpetrator. Yet, the prosecutor has not identified what that common scheme, plan, or system was here, a defect the Supreme Court specifically disapproved of in *Crawford*. *Id.* at 387.

The evidence of both incidents, if assumed true, suggests only that defendant may have had an opportunity to formulate the scheme, plan, or system to ram his daughter-in-law's car in order to help abduct his grandchild, but that he was acting purely out of impulse or rage when he rammed the truck in this case. Whatever similarity exists between the two events probably resulted more from coincidence than from a calculated effort to use a vehicle in the same way more than once. *People v Kraai*, 92 Mich App 398, 407; 285 NW2d 309 (1979). The only logical purpose of introducing evidence of the California collision would seem to be improper, *to wit*, to illustrate defendant's propensity for acting unlawfully.

The prosecutor also contends that he should be able to use the 'other acts' evidence to show the absence of mistake or accident on defendant's part. It may often be logical, in offenses involving a car collision, to introduce 'other acts' to show that an accident or mistake did not occur because car accidents are generally unintentional. However, here the evidence does not seem particularly relevant for two reasons. First, defendant has given notice that he intends to argue that he was at home during the time the prosecutor alleges that he committed the charged offense. This means that accident or mistake is not in issue because it is not an element of the charged offenses and defendant is not making it an issue for the trial. Second, if accident or mistake is an issue at trial, the real purpose of the evidence

seems to be to eliminate any inference that the three accusers may have fabricated their allegations. However, even if the accusers are relatively weak witnesses for one reason or another, such evidence merely asks the jury to believe them and to disbelieve defendant because he is prone to commit bad acts. Nor is there any clear motive for the accusers to lie in this case, and defendant does not claim that they have a vendetta or are acting out of "spite." The prosecutor merely assumes that "defendant will obviously argue fabrication."

Concerning the other side of the balancing equation considered by the trial court under MRE 403, the trial court seemed to be suggesting that, if it permitted the prosecutor to introduce the evidence, in fairness to defendant, it would have to permit defendant to counter the testimony. Such a process could take a substantial amount of time and distract from the criminal charges. Further, the balancing test requires the trial court to look at the other methods that a prosecutor has available to prove the same element of his or her case. *VanderVliet*, *supra* at 74-75. The prosecutor in the instant case claims that it will be difficult to prove defendant's intent without this evidence because he will claim that his accusers fabricated their accusations against defendant. However, the prosecutor has other evidence, including the tools defendant allegedly threw at the truck and its occupants and, presumably, a tape of the call made to 911 while defendant was purportedly in the process of ramming the truck.

Therefore, the trial court did not err by excluding the evidence. To the extent that the probative/prejudicial value of the evidence is a close call for any of the reasons alleged by the prosecutor, this Court does not ordinarily find that a lower court abused its discretion merely because it would have reached a different result. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995).

Affirmed.

/s/ William C.Whitbeck
/s/ Stephen J.Markman
/s/ Peter D.O'Connell