STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 21, 2004
v	No. 244205 Wayne Circuit Court
CHRISTINE WILLIAMS, Defendant-Appellant.	LC No. 01-007086

Before: Cavanagh, P.J., and Smolenski and Owens, JJ.

PER CURIAM.

Defendant appeals as of right her jury convictions for arson of a dwelling house, MCL 750.72, and insurance fraud, MCL 500.4511(1). We affirm.

On September 22, 2000, there was a fire at defendant's house located on Cherrylawn in the City of Detroit that was started through the use of combustible fluids. At trial, Lieutenant Charles Simms of the Detroit Fire Department testified that subsequent to the fire he received a call from Jennifer Neely, who lived at the Cherrylawn house, claiming she had information about the fire. After speaking with her, Simms contacted defendant's insurance claims agent who indicated that an investigation led to a conclusion that arson caused the fire. Simms then investigated other fires at properties associated with defendant—at houses located on Stoepel, Yacama, and Parkgrove Streets—and found that those at Yacama and Parkgrove Streets were labeled "suspicious" for arson by the fire department. He issued an arrest warrant for defendant.

The fire investigation specialist hired by defendant's insurance company, Daniel Terski, testified as an expert in the field of cause and origin of fires. His investigation revealed a distinctive flammable liquid burn pattern in the middle of the floor in the northeast upstairs bedroom that led to the hallway in the Cherrylawn house. The fuse panel box located in the kitchen had also been on fire but evidence led him to conclude that something was sprayed in the panel box and ignited by a candle to make it look like an electrical fire but it was not an electrical fire. During his investigation he noticed that there were no light bulbs in the lighting fixtures. Terski testified that finding two points of origin of a fire indicated it was intentionally set.

Wayne Figley, defendant's insurance claims adjuster, testified that in December of 1997 defendant had paid $1,100 for the house on Cherrylawn and had subsequently mortgaged the house for over $30,000. The fire insurance policy had been in effect for four years when the fire occurred. Defendant filed a claim for policy limits, $60,000, claiming that the fire was caused

either by an iron left on or an electrical problem. The insurance paid off the mortgage. Figley determined that the electricity to the house had been turned off since April of 2000 because of an outstanding bill, the house had no gas since December of 1993, and the meter had been removed in September of 2000 because of illegal use. Figley also testified that defendant had filed insurance claims after fires on other properties she owned. In December of 1999, she filed a claim on a dwelling policy as a landlord with regard to a fire at her house on Stoepel Street in Detroit which she had purchased in May of 1998 for $3,500. Because of the fire, she was paid $24,000 for the building, $1,333.36 on lost rent, and $5,295 was paid to the City to demolish the remaining structure. Figley further testified that in October and November of 1998, there were two fires at a home owned by defendant and her husband on Yacama Street in Detroit. They had a dwelling fire policy as landlords of the property and recovered $12,750 on this total loss.

Jennifer Neely, an unavailable witness, testified at defendant's preliminary examination that she lived at the house on Cherrylawn with defendant, children, and another woman. She stated that in December of 2001, defendant told her that she "paid a man to burn up the house. The first man she paid, it didn't, the house didn't burn up. The second guy it burned up." Neely testified that defendant told her she did it for the insurance money.

On appeal, defendant argues that the trial court abused its discretion by admitting the evidence about the prior fires at homes associated with defendant contrary to MRE 404(b). In particular, defendant argues that the jury could not find, by a preponderance of the evidence, that defendant committed the prior alleged arsons. We disagree. The trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999).

Under MRE 404(b), evidence of other crimes, wrongs, or acts is admissible if (1) offered for a proper purpose, (2) relevant to an issue or fact of consequence at trial, and (3) sufficiently probative to outweigh the danger of unfair prejudice, pursuant to MRE 403. *People v Starr*, 457 Mich 490, 496-498; 577 NW2d 673 (1998); *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). It is a rule of inclusion that contains a nonexclusive list of "noncharacter" grounds on which such evidence may be admitted. *Starr*, *supra* at 496. Further, the trial court need not find that there is sufficient evidence to establish that such "other acts" actually occurred before permitting its admission. See *Huddleston v United States*, 485 US 681, 689; 108 S Ct 1496; 99 L Ed 2d 771 (1988). After examining all of the evidence in the case, if the trial court concludes that a jury could reasonably find by a preponderance of the evidence that the defendant committed the "other act," such evidence is admissible. *Id*. at 690.

One of the elements that the prosecutor had to prove to establish arson of a dwelling was that defendant intended to start the fire at Cherrylawn. See *People v Nowack*, 462 Mich 392, 409-410; 614 NW2d 78 (2000). Proof of a fire alone gives rise to the presumption that it resulted from an accident; therefore, the prosecutor must show that defendant set the fire intentionally. *People v Lee*, 231 Mich 607, 612; 204 NW2d 742 (1925). Proof of a common plan, system, or scheme can be used to prove motive and intent. *People v Engelman*, 434 Mich 204, 220; 453 NW2d 656 (1990). To be admissible under MRE 404(b) as logically relevant to establish a common plan, however, the uncharged acts must be sufficiently similar to the charged act as "to support an inference that they are manifestations of a common plan, scheme, or system." *People v Sabin (After Remand)*, 463 Mich 43, 63; 614 NW2d 888 (2000). In other

words, the common features must indicate the existence of a plan and not just a series of spontaneous acts, although the plan need not be distinctive or unusual. *Id*. at 65-66, quoting *People v Ewoldt*, 7 Cal 4th 380, 403; 867 P2d 757 (1994).

Here, the prosecutor sought admission of the other acts evidence on the ground that the evidence established defendant's intent to set the house on Cherrylawn on fire in order to collect insurance proceeds. Defendant contends that such evidence should not have been admitted because a reasonable jury could not find that the fires were caused by arson or that defendant had anything to do with the fires. Evidence that defendant's properties were destroyed by fire was relevant under the prosecutor's theory if the jury could reasonably find that the other fires were intentionally set for the purpose of committing insurance fraud. Because defendant was not on trial for the other alleged arsons, the evidence need only preponderate in favor of the finding. After consideration of all of the evidence, we conclude that it does. Three properties that defendant had an interest in were destroyed by fires, at least two of the fires were labeled "suspicious" by the fire department, all of the properties were purchased for very little money yet defendant had significant insurance coverage for them, and defendant received or had the right to receive the proceeds of those policies. There was sufficient evidence to support a finding by the jury that defendant had committed the "similar acts," i.e., intentionally set the fires; thus, such evidence was admissible. See *Huddleston*, *supra* at 691.

Further, the similar acts evidence was offered for a proper purpose – that it established defendant's motive or intent to set the Cherrylawn house on fire as illustrated by her common plan, system, or scheme to buy a house for very little money, purchase an expensive insurance policy, and then burn it down and collect the insurance proceeds. The evidence was logically relevant under a theory that it showed defendant's plan, scheme, or system to commit insurance fraud by purchasing houses cheaply, buying high limit insurance policies, and then burning down the houses to collect the insurance proceeds. The common features of all of the fires include that defendant had a financial interest in each of the properties, her initial investment in the properties was very minimal, she purchased high limit insurance policies on all of the properties, the properties were kept for a period of time, and one property a year that defendant had an interest in was destroyed by a suspicious fire. See *Sabin (After Remand)*, *supra*. Hence, the proffered evidence tended to make a material fact at issue, i.e., defendant's intent to burn down her house, more probable than it would be without the evidence. See MRE 401. Further, the probative value of the other acts evidence was not substantially outweighed by the danger of unfair prejudice—it was highly probative. See MRE 403. The trial court also instructed the jury, following defendant's request, to consider the evidence only for the proper purpose for which it was admitted. In sum, the trial court did not abuse its discretion by admitting this evidence under MRE 404(b).

Finally, defendant's claim of ineffective assistance of counsel through her standard 11 brief is without merit. No evidentiary hearing was conducted with regard to her claim, so review is limited to mistakes apparent on the record. See *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000).

Defendant argues that her attorney "concealed vital facts and evidence." Defendant lists as alleged "facts and evidence," in pertinent part, that (1) she did not commit the arson or fraud and still owes money on the Cherrylawn house, (2) one of the witnesses, Neely, was not an acquaintance, (3) a child admitted to accidentally starting the fire, and (4) she received social

security insurance checks and so had no motive to cause the fire. However, to establish a claim of ineffective assistance of counsel, a defendant must affirmatively show that counsel's performance fell below an objective standard of reasonableness and that, but for defense counsel's errors, there was a reasonable probability that the result of the proceeding would have been different. *People v Stanaway*, 446 Mich 643, 687-688; 521 NW2d 557 (1994). Defendant seems to claim that her counsel failed to admit certain evidence in support of her denial of guilt but decisions as to what evidence to present are presumed to be matters of trial strategy for which this court will not substitute its judgment. See *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999). Further, the evidentiary "errors" assigned to counsel by defendant would not constitute a substantial defense; thus, defense counsel did not render ineffective assistance on these grounds. See *People v Daniel*, 207 Mich App 47, 58-59; 523 NW2d 830 (1994).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Michael R. Smolenski
/s/ Donald S. Owens