

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DIARRA DAMARI DRUMMOND,

Defendant-Appellant.

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UNPUBLISHED

November 21, 2006

No. 263560

Oakland Circuit Court

LC No. 05-201193-FC

Before: Cooper, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

Defendant was convicted of bank robbery, MCL 750.531, and armed robbery, MCL 750.529, and sentenced, as a third habitual offender, MCL 769.11, to 15 to 40 years' imprisonment for each conviction. Defendant appeals as of right. We affirm.

Defendant first argues on appeal that he was denied a fair trial by the admission of a prior bad act under MRE 404(b). We disagree. Claims of improper admission of evidence are reviewed for a clear abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). An abuse of discretion occurs when an unprejudiced person, considering the facts, would say there was no justification for the court's ruling. *People v Rice (On Remand)*, 235 Mich App 429, 439; 597 NW2d 843 (1999).

The test enunciated in *People v Golochowicz*, 413 Mich 298; 319 NW2d 518 (1982), is used to determine the admissibility of prior bad acts under MRE 404(b), to show identity through a scheme, plan, or system. *People v Smith*, 243 Mich App 657, 671; 625 NW2d 46 (2000). *Golochowicz* requires that:

- (1) there must be substantial evidence that the defendant actually perpetrated the bad act sought to be introduced;
- (2) there must be some special quality or circumstance of the bad act tending to prove the defendant's identity or the motive, intent, absence of mistake or accident, scheme, plan or system in doing the act and, in light of the slightly different language of MRE 404(b) we add, opportunity, preparation and knowledge;
- (3) one or more of these factors must be material to the determination of the defendant's guilt of the charged offense; and
- (4) the probative value of the evidence sought to be introduced must not be substantially outweighed by the danger of unfair prejudice. [*Smith, supra* at 670, quoting *Golochowicz, supra* at 309.]

Defendant claims that, under *Golochowicz*, the prior bad act was inadmissible, there was not substantial evidence showing defendant committed the prior bank robbery, other than unsubstantiated claims of witnesses, and there were no special qualities shared between the robberies except that they were both bank robberies. Furthermore, defendant claims that the evidence of the prior bank robbery confused the jury, and it is likely that the jury convicted defendant by presuming his guilt of the prior offense.

We disagree, and find that the evidence here satisfies the *Golochowicz* test of admissibility. First, substantial evidence was presented to show defendant committed the prior bank robbery. A black wig with red streaks, similar to the wig worn by the perpetrator of the prior bank robbery, was found at defendant's residence, and two individuals identified defendant as the person who committed the prior robbery. Second, there were enough similarities between the two bank robberies to satisfy the "special quality or circumstance" prong of *Golochowicz*: the two crimes were committed at the same bank within two months of each other; the perpetrator wore dark clothing; the perpetrator threatened to use explosives<sup>1</sup> but did not use a weapon; a satchel was used to carry the money; the perpetrator fled the bank on foot; two individuals identified defendant as the perpetrator of both crimes. Third, both parties agreed that identity was at issue, and therefore, the prior bad act was relevant. Fourth, since the bank teller in the charged crime was unable to identify the perpetrator, and because there was strong evidence linking defendant to both crimes, the trial court properly balanced the probative value of the prior bank robbery relative to the prejudice to defendant.<sup>2</sup> See *People v Ho*, 231 Mich App 178, 187; 585 NW2d 357 (1998). All four prongs of *Golochowicz* were met, and the trial court did not abuse its discretion by admitting evidence of the prior bank robbery.<sup>3</sup>

Defendant also argues on appeal that there was insufficient evidence to convict him of bank robbery and armed robbery. We disagree. When reviewing a claim of insufficient evidence, this Court reviews the evidence de novo, in the light most favorable to the prosecutor, to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Tombs*, 472 Mich 446, 459; 697 NW2d 494 (2005).

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<sup>1</sup> In the first robbery the perpetrator presented a note stating, "I have a bomb in my pocket." In the charged robbery, the perpetrator said, "Give me your money or else I'll blow the bank up now."

<sup>2</sup> Furthermore, the trial court gave a limiting instruction to the jury, stating that the jury should not use the prior bank robbery evidence to "decide that it shows the defendant is a bad person, or that he is likely to commit crimes. You must not convict the defendant here because you think he is guilty of bad conduct."

<sup>3</sup> Even if this Court believed it was a close question regarding whether the prosecution met the *Golochowicz* test, reversal is not warranted. "[C]lose questions arising from the trial judge's exercise of discretion on matters concerning the admission of evidence do not call for appellate reversal because the reviewing justices would have ruled differently." *Golochowicz*, *supra* at 322. The trial court has discretion to make evidentiary judgments, and the decision to a close question is generally not an abuse of discretion. *Id.*

Michigan's bank robbery statute, MCL 750.531, "requires for its violation, by whatever means accomplished, the larcenous or felonious intent to access a bank . . . ." *People v Ford*, 262 Mich App 443, 454-455; 687 NW2d 119 (2004). The elements of armed robbery are: (1) an assault, (2) a felonious taking of property from the victim's presence or person, (3) while the defendant is armed with a weapon. *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999). The only issue in this case was the identity of the bank robber.

Defendant claims the only evidence linking him to the bank robbery was his cell phone. In addition, three out of four bank employees who were witnesses to the robbery identified someone other than defendant at the line-up, including the bank teller who was robbed. However, the prosecution presented testimony that one of the bank tellers was "rock solid" in identifying defendant as the perpetrator. Another individual also identified defendant as the person he saw running away from the bank. Defendant's cell phone was found in the area after a tracking dog tracked directly past it. A note stating, "I have a grenade. Make no eye contact with anyone," was found in defendant's bedroom, which was consistent with testimony that the robber said, "Give me your money or I will blow up your bank." On the other side of the note was a map of the area where the bank is located. Defendant had clothes in his clothes dryer that matched the description of the clothes worn by the robber, and one pair of pants had a pink stain on the waistband, consistent with the exploding dye pack from the bank. A Kangol hat on defendant's clothes dryer matched the hat worn by the robber. A wig found in defendant's bedroom matched the wig worn by the perpetrator of the prior bank robbery. We find that, viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence for a rational trier of fact to find defendant guilty beyond a reasonable doubt of bank robbery and armed robbery.

Affirmed.

/s/ Jessica R. Cooper  
/s/ Joel P. Hoekstra  
/s/ Michael R. Smolenski