

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWN MICHAEL ELY,

Defendant-Appellant.

UNPUBLISHED

March 22, 2007

No. 266080

Allegan Circuit Court

LC No. 05-014142-FC

Before: O’Connell, P.J., and Murray and Davis, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of premeditated first-degree murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b. The trial court sentenced him to life in prison for the murder conviction, and two years’ imprisonment for the felony-firearm conviction. We affirm.

On the morning of Tuesday, January 6, 2004, the victim’s employer discovered him dead inside the trailer where he resided. The victim died of a gunshot wound to the face. Before the victim’s death, he and defendant appeared to be close friends. But, the police could not locate defendant for several days after the discovery of the victim’s body. Later, the police received information that, after the shooting, defendant traveled from Michigan to New Orleans, Louisiana and that he returned to Michigan on Saturday, January 10. When questioned by the police, defendant admitted making the trip to New Orleans, but he denied having any information regarding the victim’s death.

More than one year after the shooting, defendant’s coworker, Daniel Andre, informed the police that he witnessed defendant shoot the victim. According to Andre, on Monday, January 5, 2004, defendant borrowed a shotgun from him, loaded it, and changed his boots. Andre and defendant subsequently drove defendant’s truck to a trailer in the woods. Defendant knocked on the door of the trailer and, after a few minutes, Andre heard a gunshot. Defendant subsequently reentered the truck and drove away. Defendant subsequently disposed of a shotgun shell, his boots, and pieces of the shotgun. Later, defendant told Andre that, while he was in New Orleans, he also changed the tires and seat covers on his truck.

After Andre reported this information to the police, Detective John Stidham obtained a warrant for defendant’s arrest and followed defendant when he drove away from his parents’ house. Defendant drove quickly and erratically, and looked back and forth at the vehicles around

him. After driving through several stop lights, and taking unnecessary turns, defendant parked at his brother's house. He got out of his vehicle and walked behind the house. After several minutes, defendant walked away from the house and looked directly into Stidham's eyes as if he recognized him. Shortly thereafter, Stidham lost sight of defendant in a wooded area. Later that evening, police officers surrounded the house where defendant was hiding and ordered him out.

On appeal, defendant argues that the trial court abused its discretion when it admitted evidence that he fled the state after the victim's death and that he fled from a police officer on the evening of his arrest. We review a trial court's decision to admit evidence for a clear abuse of discretion. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003). The abuse of discretion standard acknowledges that there are circumstances in which there is no one correct outcome. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). We defer to the trial court's judgment, and if the trial court's decision results in an outcome within the range of principled outcomes, it has not abused its discretion. *Id.*

Although flight alone is insufficient to warrant conviction, it is admissible to show consciousness of guilt. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). The term "flight" has been applied to fleeing the scene of the crime, leaving the jurisdiction, running from the police, and resisting arrest. *Id.* Defendant argues that evidence of his trip to New Orleans was inadmissible because there was no evidence that he left Michigan in an effort to evade the police. We disagree. "It is true that 'flight from the scene of a tragedy may be as consistent with innocence as with guilt;' but it is always for the jury to say whether it is under such circumstances as to evidence guilt." *People v Cutchall*, 200 Mich App 396, 398; 504 NW2d 666 (1993), quoting *People v Cipriano*, 238 Mich 332, 336; 213 NW 104 (1927). Here, it was the jury's duty to determine whether defendant's flight from Michigan was for innocent reasons or because he had a guilty state of mind. Evidence that defendant left Michigan unexpectedly and suddenly after the victim's death, and that he disposed of potentially incriminating evidence during his trip, was certainly relevant to show consciousness of guilt. Defendant's argument that he did not leave Michigan to flee from the police does not affect the admissibility of this evidence, but relates to the weight and credibility of the evidence, which are questions of fact for the jury.

Defendant additionally argues that evidence that he fled from Detective Stidham on the evening of his arrest was inadmissible because there was no evidence that he knew he was being followed. Again, we disagree. Evidence that defendant knew Detective Stidham, and that he drove erratically, disappeared into a wooded area, and hid in his brother's house while the police surrounded it, certainly indicates that he intentionally fled from the detective. Therefore, the challenged evidence is relevant to show consciousness of guilt. *Coleman, supra* at 4. Whether defendant's actions were innocent is a question of fact for the jury. See *Cutchall, supra* at 398.

Further, we disagree with defendant's argument that the probative value of this evidence was substantially outweighed by the danger of unfair prejudice. "Evidence is unfairly prejudicial when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury." *People v Ortiz*, 249 Mich App 297, 306; 642 NW2d 417 (2001). The challenged evidence was highly probative because it was relevant to showing consciousness of guilt. Evidence of a defendant's flight "becomes part of a seamless web of evidence that a rational trier of fact could employ to find the elements of the crime proven beyond a reasonable doubt." *Cutchall, supra* at 401. Moreover, the trial court alleviated any prejudice to defendant

by instructing the jury that it should determine whether the evidence of flight was true and whether it indicated a guilty state of mind. Therefore, we find that the trial court did not abuse its discretion in admitting evidence of defendant's flight.

Defendant next argues that the trial court abused its discretion when it admitted evidence of his prior illicit drug use. We review a trial court's decision to admit evidence pursuant to MRE 404(b) for a clear abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998); *People v McGhee*, 268 Mich App 600, 609; 709 NW2d 595 (2005).

Pursuant to MRE 404(b), evidence of an individual's crimes, wrongs, or bad acts is inadmissible to show a propensity to commit such acts. *Crawford, supra* at 383. However, the evidence may be "admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act . . . absence of mistake or accident when the same is material . . ." MRE 404(b). In *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), the Court clarified the test to determine the admissibility of other bad-acts evidence:

First, that the evidence be offered for a proper purpose under Rule 404(b); second, that it be relevant under Rule 402 as enforced through Rule 104(b); third, that the probative value of the evidence is not substantially outweighed by unfair prejudice; fourth, that the trial court may, upon request, provide a limiting instruction to the jury.

MRE 403 provides that even relevant evidence may be excluded if its probative value is substantially outweighed by danger of unfair prejudice to the defendant. *People v Layher*, 464 Mich 756, 769; 631 NW2d 281 (2001).

Defendant argues that evidence of his illicit drug use was not offered for a proper purpose pursuant to MRE 404(b). We find, however, that the trial court properly admitted evidence that defendant held paranoid beliefs as a result of methamphetamine use for the purpose of establishing motive. The prosecutor presented expert witness testimony that methamphetamine users frequently suffer from paranoia and often suspect police conspiracies against them. Several additional witnesses testified that defendant used methamphetamines, that he regularly exhibited paranoid behavior, and that he was particularly afraid of police surveillance and conspiracies against him. Moreover, evidence that defendant believed, as a result of his drug use, that the victim was a police officer or police informant was certainly relevant to establishing motive, particularly in light of evidence that defendant threatened to kill his friends if he discovered that they were involved with the police.

Defendant additionally argues that this evidence was irrelevant. We disagree. To be relevant, evidence must be material to a fact of consequence to the action. *People v Ackerman*, 257 Mich App 434, 439; 669 NW2d 818 (2003). The prosecutor offered the challenged evidence to establish motive and "proof of motive in a prosecution for murder, although not essential, is always relevant." *People v Rice (On Remand)*, 235 Mich App 429, 442; 597 NW2d 843 (1999). See also *People v Fisher*, 449 Mich 441, 453; 537 NW2d 577 (1995).

Further, we find no merit to the argument that this evidence was unfairly prejudicial. See *Ortiz, supra* at 306. Although the challenged evidence was damaging to defendant's position, it was highly probative because it was relevant to establishing motive. Moreover, there is no

evidence that the jury gave preemptive weight to the challenged evidence. See *Id.* In presenting evidence that defendant used methamphetamines, the prosecutor emphasized defendant's paranoid beliefs about police surveillance, rather than his propensity to engage in illegal activities. Furthermore, there was an overwhelming amount of evidence presented at trial of defendant's guilt, including eyewitness testimony. Therefore, we find that the trial court did not abuse its discretion in admitting evidence of defendant's illicit drug use.

Affirmed.

/s/ Peter D. O'Connell

/s/ Christopher M. Murray

/s/ Alton T. Davis