

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHNNY RAZKOM PUTRUS, a/k/a JOHHNY
RAZKOM PUTRUS, a/k/a JOHNNY RAZKOM
PUTRUS,

Defendant-Appellant.

UNPUBLISHED

March 10, 2009

No. 280767

Wayne Circuit Court

LC No. 06-010996-01

Before: Talbot, P.J., and Bandstra and Gleicher, JJ.

PER CURIAM.

Defendant pleaded guilty to possession with intent to deliver methamphetamine or 3,4-methylenedioxymethamphetamine (“ecstasy”), MCL 333.7401(2)(b)(i), possession with intent to deliver marijuana, MCL 333.7401(2)(d)(iii), and possession of a firearm during the commission of a felony, MCL 750.227b. The plea was a conditional one in which defendant preserved the right to appeal the trial court’s earlier evidentiary ruling allowing the prosecutor to introduce similar acts evidence of prior drug transactions at defendant’s trial. Defendant was sentenced to concurrent prison terms of 7 to 20 years for the possession with intent to deliver conviction and 1 to 4 years for the marijuana conviction, to be served consecutive to a two-year term of imprisonment for the felony-firearm conviction. This Court denied defendant’s delayed application for leave to appeal,¹ but our Supreme Court, in lieu of granting leave to appeal, subsequently remanded the case to this Court “for consideration, as on leave granted, of the defendant’s argument that the trial court erroneously permitted the introduction of evidence of prior drug transactions under MRE 404(b).” *People v Putrus*, 482 Mich 978; 755 NW2d 189 (2008). We affirm.

At the preliminary examination, police officers David Sanders, James McDonald, and Ronald Hopp testified that at 2:45 a.m. on August 25, 2006, they observed a man approaching a vacant house. Through an uncovered window, Officer McDonald saw defendant walking down

¹ *People v Putrus*, unpublished order of the Court of Appeals, entered December 20, 2007 (Docket No. 280767).

a stairwell inside the house, but then, upon observing the police, run back upstairs, past a picture window on the second level, and toward the back of the house. Officer Sanders ran to the back of the house and saw defendant exit through a door on the second-floor balcony. Officer Sanders saw defendant stuff a large clear plastic bag underneath the roof overhang near the deck area and then go back inside. The bag was later recovered and contained 1,008 ecstasy pills packaged in 12 sandwich bags. After defendant went back inside the house, another man let Officer Hopp and his partner inside the house. Officer Hopp observed defendant coming from the kitchen area in the rear, upper level of the house. A semi-automatic handgun was found on a kitchen counter in the area where defendant had been, and marijuana packaged in small sandwich bags, clear vials, and a scale were found on a card table in the living room.

The prosecution filed a notice of intent to introduce similar acts evidence at defendant's trial, specifically:

On November 2, 2004, Detective Allen of the Eastpointe Police Department, acting in an undercover capacity, called Mr. Putrus for the purpose of purchasing ecstasy pills. Mr. Putrus sold Detective Allen 1 ½ jars of pills.

Over defendant's objection, the trial court ruled that the evidence was admissible to establish defendant's intent to deliver the seized ecstasy pills.

On appeal, defendant argues that the trial court abused its discretion by granting the prosecution's motion to introduce the prior acts evidence under MRE 404(b).

This Court reviews a trial court's decision regarding the admissibility of other-acts evidence for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). A court abuses its discretion when it chooses an outcome that lies outside the range of reasonable and principled outcomes. *People v Orr*, 275 Mich App 587, 588-589; 739 NW2d 385 (2007).

MRE 404(b)(1) precludes the admission of evidence of other crimes, wrongs, or acts "to prove the character of a person in order to show action in conformity therewith." The evidence may be admitted for other purposes, however, including "proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material" MRE 404(b). To be admissible under MRE 404(b), other acts evidence generally must satisfy three requirements: (1) it must be offered for a proper purpose, (2) it must be relevant, and (3) its probative value must not be substantially outweighed by its potential for unfair prejudice. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004).

The trial court determined that the evidence was admissible on the issue of intent to deliver, which is a "proper purpose" under MRE 404(b)(1). With respect to relevance, this Court inquires whether the evidence was material and probative. *Crawford, supra* at 388. The elements of an offense are always material. *Id.* at 389. Possession of a controlled substance with intent to deliver includes as elements that the defendant knowingly possessed a controlled substance and intended to deliver it to someone else. *Crawford, supra* at 389.

Defendant argues that whether there was knowledge that ecstasy is a controlled substance or whether there was an intent to deliver ecstasy are not the "real" issues. He reasons that the

existence of 1,008 ecstasy pills in a prepackaged form would itself lead a fact-finder to conclude that there was the requisite knowledge and intent, without more. Thus, defendant contends evidence of his prior ecstasy offense was completely unnecessary to prove knowledge or intent.

However, even if defendant had affirmatively stipulated that, assuming that he possessed the bag full of ecstasy pills, he acted with both the requisite knowledge and intent, the prosecutor would still have to prove knowledge and intent as elements of the crime. *People v McGhee*, 275 Mich App 600, 610-611 n 3; 709 NW2d 595 (2005). Thus, defendant's knowledge and intent remained "real issues" in this case, with respect to which the prosecutor had the right to produce material and probative evidence.

Further, defendant's "real issue" argument rests on the assumption that the existence of the prepackaged pills amply demonstrated both knowledge and intent, while there was comparatively little evidence regarding possession, apart from the contested prior act evidence. The record demonstrates otherwise. The testimony of Officers McDonald and Hopp regarding defendant's movements within the house directly corroborated the eyewitness testimony of Officer Sanders that defendant possessed the bag full of ecstasy pills and placed them underneath a roof overhang, and, that was where the bag was later recovered.

We acknowledge that "determining the admissibility of other acts evidence is often difficult," *People v Sabin (After Remand)*, 463 Mich 43, 57 n 5; 614 NW2d 888 (2000), as this case demonstrates. Nonetheless, there was evidence, apart from the contested prior bad act evidence, establishing both knowledge and intent, on the one hand, and possession on the other. Thus, we cannot conclude that the trial court abused its discretion in reasoning that the contested prior bad act evidence was not merely offered to show that defendant possessed the ecstasy. Nor can we conclude that the probative nature of the prior bad act with respect to the knowledge and intent elements was outweighed by its possible prejudice in leading the fact finder to determine defendant's guilt on the basis of his bad character. "[T]he trial court's decision on a close evidentiary question such as this one ordinarily cannot be an abuse of discretion." *Sabin, supra* at 67.

We affirm.

/s/ Michael J. Talbot
/s/ Richard A. Bandstra
/s/ Elizabeth L. Gleicher