

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID ANTHONY ST. ANN,

Defendant-Appellant.

UNPUBLISHED
November 9, 2010

No. 294569
Wayne Circuit Court
LC No. 09-010620-FH

Before: SERVITTO, P.J., and ZAHRA and DONOFRIO, JJ.

PER CURIAM.

A jury convicted defendant of first-degree premeditated murder, MCL 750.316, felon in possession of a firearm, MCL 750.227b, false application for state identification, MCL 28.2931, and four counts of uttering and publishing, MCL 750.249. The trial court sentenced him to concurrent sentences of life imprisonment for first-degree premeditated murder conviction, 2 to 14 years' imprisonment for the uttering and publishing conviction, 1 to 5 years' imprisonment for the false application for state identification conviction, all to be served consecutive to 2-years' imprisonment for the felony firearm conviction. We affirm.

I. BASIC FACTS

This case arises from the March 25, 2007, death of Gary Jones in the city of Detroit. At three a.m. on that date, Detroit Police Officers Peter Padron and Eric Smith responded to a 911 call and found Jones' body lying on the street with six gunshot wounds. Defendant and Jones were believed to be long-time friends. However, family members last saw Jones alive leaving his home with defendant in a red Cadillac shortly before three a.m.

The prosecution presented additional evidence to connect defendant to Jones' death. In general, the prosecution presented a narrative in which defendant and Jones attempted to commit insurance fraud, but defendant surreptitiously changed the beneficiary to someone whose identity he could exploit to collect the proceeds after killing Jones. Specifically, the prosecution presented evidence relating to two \$250,000 life insurance policies on Jones. Jones, 24 years old and single, acquired one of these policies (Northwestern Mutual) in person through an agent on September 23, 2005. Jones listed his address as 18510 St. Aubin, which was not Jones' home. The second policy (Jefferson National) was not issued to Jones in person, but likely over the phone also in September 2005. Jones' address was again listed at 18510 St. Aubin. Both policies initially listed Jones' mother as the beneficiary.

To connect defendant with the insurance policies, the prosecution presented evidence that police, on August 31, 2005, had responded to a call at 18510 St. Aubin. There, police identified defendant as a trespasser at that address. Police ordered him to remove personal items from the house. Also, the telephone number defendant provided to the police officers was the contact number Jones listed on the Northwestern Mutual policy. The cell phone number was registered to defendant.

The prosecution presented evidence that Northwestern Mutual received a change of beneficiary form on July 4, 2006 to remove Jones' mother as a beneficiary and add Steven Henry, who was represented to be Jones' stepfather. Steven Henry's address was listed as 9023 Berkshire. Defendant has a Michigan identification card with a 9623 Berkshire address. The red Cadillac defendant drives is registered to Kaline Brown at the 9623 Berkshire address. The prosecution presented a Michigan identification card bearing Kaline Brown's name with a picture bearing the likeness of defendant. Jones' mother testified that she did not know she was ever a beneficiary and that she did not know Steven Henry. Notably, this change was not made in person. Shortly before Jones' death, Northern Mutual received another change of beneficiary form dated February 20, 2007 naming Willard Redding as a beneficiary, again represented as Jones' uncle. Jones' mother testified that Jones did not have an uncle named Willard Redding. Redding's address was listed at 5082 Buckingham. Defendant has a Michigan identification card with a 5082 Buckingham address. Near the same time, Jefferson National received another change of beneficiary form dated February 21, 2007 naming Willard Redding the beneficiary, who was represented to be Jones' uncle. Defendant signed the document as a witness to the amendment. The document also lists the address of 14810 Hazelridge below the witness signatures, which is the same address defendant provided to police on May 9, 2007 as a previous address.

After Jones' death, a caller identifying himself as Willard Redding informed Northwestern Mutual that Jones had died and provided contact information at PO Box 15571. However, at trial, the prosecution presented Willard Redding, who notably had always referred to himself by his middle name, Michael. He testified that he had known defendant as "Cory" since around 2000 and they had attempted insurance "scams" together.¹ He also testified that he did not request proceeds from Northwestern Mutual and had no knowledge of life insurance for Jones until police informed him he was under suspicion of murder. He testified that five days after Jones' death defendant drove him to the post office and paid him \$50 to open a post office box and give defendant the key. He testified that defendant later informed him that he had lost the post office box key. He testified that defendant drove him to the post and he acquired another key but left his wallet in the car. Defendant returned the wallet a week later.

¹ Although the record is unclear as to the date, Redding testified that defendant paid him \$100 to help with an insurance scam and drove him to an insurance agency. There defendant paid \$113 for a \$25,000 life insurance policy for Redding in which defendant was named the beneficiary. Redding testified that two weeks later he cancelled the policy because he believed defendant was going to kill him.

After receiving the above phone call, Northwestern Mutual sent and received back a beneficiary claim statement. The listed mailing address was PO Box 15571 and the listed street address was 4855 Beaconsfield, which is the address defendant provided police on August 31, 2005 as a prior address. Jefferson National also received a completed death claim form indicating a mailing address at PO Box 15571.

Northwestern Mutual accepted the beneficiary claim statement and deposited \$250,000 plus interests into an account at Mellon Bank. The access checks for Redding's account were sent to PO Box 15571 but apparently not received. Then, a request was made to send the draft checks to 18927 Westphelia. Defendant has a Michigan identification card with an 18927 Westphelia address.

The prosecution presented evidence that defendant negotiated checks under Redding's account. On July 14, 2007, he opened an account at J.P Morgan and deposited a \$3,500 check allegedly signed by Willard Redding. Defendant opened the account listing an 18927 Westphelia address, which was the same address listed on Redding's check. Later, there was a \$100 ATM withdrawal from this account and defendant withdrew \$3,270 from the account in person. There was evidence that defendant opened a second account at J.P. Morgan with a \$1,500 check. This account however was opened in the name of Kaline Brown, who was in prison at the time and notably owned the Cadillac in which defendant and Jones were last seen. The consumer address for the account was 5653 Beaconsfield. There was a later withdrawal of \$1370 from the account. The prosecution presented the allegedly false Michigan identification card used by defendant to open the account and Kaline Brown's actual Michigan identification card. Defendant last opened an account at La Salle Bank in his own name using the 18927 Westphelia address. Defendant then deposited a \$200,000 check. However, an unnamed insurance inspector learned that Jones' mother had no knowledge of any insurance policies, and eventually Mellon Bank alerted Northwestern Mutual of potential fraud on Redding's account. Jones' mother also testified that after Jones died she stopped receiving mail and learned that her address had been changed.

The prosecution also presented evidence that defendant's statements to police were inconsistent with other witnesses' testimony offered at trial. In particular, defendant claimed he was at Jones' home at one a.m., which was inconsistent with two witnesses at trial that testified he was at Jones' home between two a.m. and three a.m. Defendant presented no case. The jury convicted defendant as charged and this appeal ensued.

II. INSUFFICIENT EVIDENCE

In a criminal case, due process requires that a prosecutor introduce evidence sufficient to justify a trier of fact in concluding that the defendant is guilty beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999); *People v Tombs*, 260 Mich App 201, 206-207; 679 NW2d 77 (2003). In reviewing the sufficiency of the evidence, this Court must view the evidence de novo in the light most favorable to the prosecutor and 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); *People v Ericksen*, ___ Mich App ___, ___ NW2d ___ (Docket No. 288496, issued April 15, 2010), slip op pp 1-2.

“[T]o convict a defendant of first-degree premeditated murder, the prosecution must first prove that the defendant intentionally killed the victim.” *People v Unger*, 278 Mich App 210, 223; 749 NW2d 272 (2008), citing *People v Marsack*, 231 Mich App 364, 370; 586 NW2d 234 (1998).

Defendant argues that the evidence does not support his convictions for first-degree premeditated murder and felony-firearm because the jury speculated that defendant intended to kill Jones merely because defendant was with Jones shortly before police found Jones dead and because defendant profited from Jones’ life insurance policy.

The prosecution’s case against defendant was entirely circumstantial and there was no eyewitness testimony presented at trial. However, circumstantial evidence and reasonable inferences arising therefrom may constitute satisfactory proof of the elements of the offense. *Marsack*, 231 Mich App at 371.

We conclude there was more than sufficient circumstantial evidence presented for a rational jury to conclude beyond a reasonable doubt that defendant intentionally killed Jones. Defendant clearly had the opportunity to murder Jones. Evidence of opportunity is logically relevant in a prosecution for murder. *People v Ortiz*, 249 Mich App 297, 305-306; 642 NW2d 417 (2001). There was evidence that Jones and defendant were last seen together in a Cadillac driven by defendant at 2:40 a.m. Police responded to a 911 call and discovered Jones’ body at 3:00 a.m. Given that some distance had been traveled from Jones’ home to where his body was discovered there is evidence to reasonably conclude that defendant had the opportunity to murder Jones.

Further, there is overwhelming evidence that defendant had a remarkably strong motive to murder Jones. Although motive is not an essential element of the crime, evidence of motive in a prosecution for murder is always relevant. *People v Rice (On Remand)*, 235 Mich App 429, 440; 597 NW2d 843 (1999). In cases in which the proofs are circumstantial, evidence of motive is particularly relevant. *People v Fisher*, 449 Mich 441, 453; 537 NW2d 577 (1995). “Evidence of insurance on the life of the deceased is admissible in a prosecution for murder as long as it can be established that the defendant was aware of the insurance policy before the killing took place.” *People v Unger*, 278 Mich App 210, 224; 749 NW2d 272 (2008), citing *People v Auerbach*, 176 Mich 23, 40; 141 NW 869 (1913).

Here, the jury did not need to speculate to conclude that defendant murdered Jones to collect life insurance proceeds. There was clear evidence that defendant knew of the life insurance policies. On appeal, he even admits to being “involved in an insurance fraud scheme which involved [Jones.]” Indeed, there is no dispute that defendant actually deposited some of the proceeds and signed as a witness to amend a change of beneficiary form. The prosecution presented a myriad of connections between defendant and the life insurance policies. These connections allow for a reasonable inference that defendant caused Redding to be beneficiary of each policy. Redding did not know Jones, but he did know defendant and even previously engaged in insurance fraud with defendant. Further, there was evidence that defendant convinced Redding to open a post office box in Reddings’ name and give defendant the key. Defendant then used the Redding’s post office as a mailing address for the two policies. He used Redding’s post office to change the policy mailing address to a residence listed on one of his

Michigan identification cards. From there, there is evidence that defendant forged Redding's signature and deposited insurance proceeds into his own accounts. Because there is evidence that defendant changed the beneficiaries before Jones' murder, there is evidence to conclude that defendant intended to murder Jones to collect Jones' life insurance proceeds.

Given the conclusion, we need not consider defendant's argument that the trial court erred in denying his motion to quash the murder charge. "A circuit court's decision to grant or deny a motion to quash charges is reviewed de novo to determine if the district court abused its discretion in binding over a defendant for trial." *People v Jenkins*, 244 Mich App 1, 14; 624 NW2d 457 (2000). However, a magistrate's erroneous conclusion that sufficient evidence was presented at the preliminary examination is rendered harmless by the presentation at trial of sufficient evidence to convict. *People v McGee*, 258 Mich App 683, 693; 672 NW2d 191 (2003); *People v Meadows*, 175 Mich App 355, 359; 437 NW2d 405 (1989). Further, because defendant's motion for directed verdict merely iterated defendant's motion to quash the murder charge, we need not address it.

III. INEFFECTIVE ASSISTANCE OF COUNSEL

Here, there was not a hearing in the trial court, and this Court's review is limited to the existing record. *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973); *People v Wilson*, 242 Mich App 350, 352; 619 NW2d 413 (2000). The questions presented by a claim of ineffective assistance of counsel are mixed questions of law and fact; findings of fact by the lower court are reviewed for clear error, and questions of constitutional law are reviewed de novo. *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

The right to counsel is guaranteed by the United States and Michigan Constitutions. US Const, Am VI; Const 1963, art 1, § 20. Where the issue involves counsel's performance, a defendant must show that (1) counsel's performance was below an objective standard of reasonableness under professional norms, and (2) there is a reasonable probability that, if not for counsel's errors, the result would have been different and the result that did occur was fundamentally unfair or unreliable. *Strickland v Washington*, 466 US 668, 687-688; 104 S Ct 2052; 80 L Ed 2d 674 (1984); *People v Pickens*, 446 Mich 298, 309, 312-313; 521 NW2d 797 (1994).

Defendant argues that defense counsel provided ineffective assistance at trial by failing to move to exclude evidence of defendant's previous "bad acts." Defendant specifically objects to Redding's testimony that he and defendant had previously attempted insurance scams and his testimony that he believed defendant would kill him to collect insurance proceeds.

MRE 404(b) generally governs admission of evidence of bad acts. It provides:

(1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as 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, whether such other

crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

To be admissible, evidence of other crimes, wrongs, or acts must satisfy the following 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 Magyar*, 250 Mich App 408, 413; 648 NW2d 215 (2002), citing *People v Golochowicz*, 413 Mich 298, 308; 319 NW2d 518 (1982). “A proper purpose is one other than establishing the defendant’s character to show his propensity to commit the offense.” *Id.*, citing *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), amended on other grounds 445 Mich 1205; 520 NW2d 338 (1994). “[E]vidence of similar misconduct is logically relevant to show that the charged act occurred where the uncharged misconduct and the charged offense are sufficiently similar to support an inference that they are manifestations of a common plan, scheme, or system.” *People v Sabin*, 463 Mich 43, 63; 614 NW2d 888 (2000). However, the trial court must closely scrutinize the logical relationship between the evidence and the fact in issue. *People v Dobek*, 274 Mich App 58, 86; 732 NW2d 546 (2007). A general similarity between the charged and uncharged acts does not alone establish a plan, scheme, or system used to commit the acts. *People v Knox*, 469 Mich 502, 510; 674 NW2d 366 (2004), citing *Sabin*, 463 Mich at 64.

Here, the prosecution presented a narrative in which defendant and Jones attempted to commit insurance fraud, but defendant surreptitiously changed the beneficiary to someone whose identity he could exploit to collect the proceeds after killing Jones. Redding’s testimony that defendant had convinced him to designate defendant, a relative stranger, as a beneficiary suggests that defendant had previously engaged in a very similar plan, scheme, or system used to commit offenses in the instant case. While the instant case involved a more elaborate plan, scheme, or system, both cases still involve a rather particular result in which defendant receives life insurance policy proceeds from someone that would not likely name him a beneficiary. Redding’s testimony was relevant to establish defendant’s intent to obtain Jones’ life insurance proceeds. This evidence tends to establish defendant’s motive and is clearly admissible.

Defendant argues that Redding’s testimony was nonetheless too prejudicial under MRE 403. MRE 403 states, in pertinent part, that “although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice” Any relevant evidence will be damaging to some extent. *People v Mills*, 450 Mich 61, 75-76; 537 NW2d 909, mod, rem’d 450 Mich 1212; 539 NW2d 504 (1995). Here, Redding’s testimony was not cumulative to other evidence and thus important to establishing defendant’s motive and intent to kill. Therefore, we cannot conclude that the probative value of Redding’s testimony was *substantially* outweighed by the danger of unfair prejudice. Accordingly, we conclude that defense counsel’s objection would have been futile and defense counsel was not ineffective for failing to object to Redding’s testimony.

Affirmed.

/s/ Deborah A. Servitto
/s/ Brian K. Zahra
/s/ Pat M. Donofrio