

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MANJEET SINGH BHATTAL,

Defendant-Appellant.

UNPUBLISHED

January 4, 2011

No. 290739

Oakland Circuit Court

LC No. 2007-215305-FC

Before: GLEICHER, P.J., and ZAHRA and K.F. KELLY, JJ.

GLEICHER, J. (*concurring*).

I concur in the majority's decision to affirm defendant's conviction, but write separately to explain the basis for my view that sufficient and admissible evidence supported the jury's verdict.

On March 29, 2007, police in Troy discovered 12 kilograms of cocaine in a Ford Expedition licensed in Illinois, and occupied by Andon Filipi and Anthony Gonzalez. Subsequently, the Oakland County prosecutor charged that defendant Manjeet Bhattal (also known as Mani) and codefendants Filipi, Gonzalez, Tonin Prendi, and David Trevino had conspired to deliver the cocaine. Gonzalez testified for the prosecution in exchange for a plea agreement limiting his minimum sentence to two and a half years.

Gonzalez commenced his trial testimony by describing the nature and history of his relationships with Bhattal, Filipi and Trevino. He explained that he grew up in the Chicago area with Filipi and Trevino, and that all of the alleged conspirators continued to reside there. Gonzalez related that for several years, he and the charged conspirators, including Bhattal, worked together in a marijuana enterprise. Gonzalez recounted that he began purchasing large quantities of marijuana from Filipi around two years before the Troy cocaine bust. During their marijuana business dealings, Gonzalez accompanied Filipi on a drive to an apartment complex in Waterford, Michigan. There, Filipi delivered \$50,000 cash to an Albanian man who Filipi identified as "his connection's brother-in-law." Gonzalez believed that Filipi's marijuana "connection" "was from Canada."

Over the vigorous objection of Bhattal's counsel, Gonzalez also detailed a series of marijuana transactions involving Bhattal. Gonzalez testified that between August 2006 and December 2006, he and Bhattal drove from Chicago to the Horseshoe Casino in Indiana, where they picked up 150 to 200 pounds of marijuana. When they arrived at the casino, Bhattal handed

Gonzalez the key to a Dodge pickup truck, which Gonzalez used to transport the marijuana back to Illinois. When the marijuana had been sold, Gonzalez and Bhattal made a second trip to Indiana, picked up another 150 to 200 pounds of marijuana, and again transported the load to Illinois. At some point after the second marijuana road trip with Bhattal, Filipi introduced Gonzalez to David Ruiz.¹ Gonzalez recounted that Ruiz supplied cocaine to Filipi, and was “a friend” to both Filipi and Bhattal. Gonzalez encountered Ruiz a second time at an establishment he described as a “bar slash club” in Chicago, where Bhattal joined them.

Trevino, a lower-level participant in the drug enterprise, lived in a Chicago-area apartment owned by Filipi, and watched over marijuana stored there. On March 23, 2007, Trevino’s girlfriend called the police after an episode of domestic violence, and Trevino alerted Filipi that a police visit to the apartment was imminent. When Filipi received Trevino’s call, he was in a car with Gonzalez, driving to Bhattal’s house “[t]o meet with Mani.” They picked up Bhattal, drove to Trevino’s apartment, and noted the presence of police vehicles. After Filipi went home, Gonzalez and Bhattal drove around together all night, using cocaine. Gonzalez remembered that as they drove, Filipi telephoned Bhattal, and Gonzalez heard Filipi declare, “[T]hat has to be moved.”

The next morning, March 24, 2007, Gonzalez and Bhattal drove to a taxi dispatch office that Bhattal and Filipi had rented. Bhattal unlocked the taxi office and removed some ceiling tiles, revealing two black “computer. . . laptop” bags. Bhattal instructed Gonzalez to extract the bags from the ceiling and place them into the trunk of a taxi cab that Bhattal backed up to the building. Gonzalez described the bags as “fairly heavy.” In response to questioning by the prosecutor, Gonzalez elaborated as follows concerning the weight of the bags:

Q. And did, were the bags that you carried, would they have fit say 10 pounds of marijuana in them each?

A. No.

Q. Okay. So the size of the bags that you carried would not fit 10 pounds of marijuana, right?

A. Correct.

Q. Okay. Were the bags heavier than 10 pounds?

A. Apiece?

Q. Yes.

A. Uh, they were around 10 pounds.

¹ The record also refers to Ruiz as David Roesse.

Q. Apiece?

A. I believe.^[2]

After placing the bags in the taxi, Gonzalez and Bhattal picked up Ruiz, who already knew of Trevino's arrest. Eventually they dropped off Ruiz, and Gonzalez transported Bhattal home.

Two days later, on March 26, 2007, Bhattal rented a Ford Expedition at O'Hare Airport. On March 27, 2007, Filipi and Prendi purchased cell phones at a store in Waterford, Michigan. The store's owner recalled that the next day, Filipi and Prendi returned to the store, and Bhattal arrived in an Expedition bearing Illinois plates. Bhattal proceeded to purchase the same model cell phone as had Filipi and Prendi. Evidence supplied by an Illinois detective established that Bhattal had flown to Michigan that morning.

Gonzalez testified that on the night of March 28, 2007, Bhattal and Filipi arrived at Filipi's Chicago-area apartment in an Expedition. Filipi, Bhattal and Gonzalez then drove the Expedition to O'Hare airport, so that Bhattal could retrieve a truck Filipi had parked there. On March 29, 2007, Gonzalez and Filipi drove the Expedition to Michigan, where they met Prendi at a car wash. Filipi pulled a bag from Prendi's vehicle and placed it in the back of the Expedition. Gonzalez understood that the bag contained cocaine destined for delivery to Canada. At 5:00 p.m., the police stopped the Expedition, and shortly thereafter discovered the cocaine.

Bhattal asserts that Gonzalez's testimony concerning the 2006 marijuana transactions constituted "prior bad acts" evidence inadmissible under MRE 404(b), and that no evidence supported Bhattal's knowledge that Gonzalez and Filipi were dealing in cocaine. According to Bhattal's brief on appeal, "[T]here was *no* evidence of any specific intent on the part of Mr. Bhattal to either deliver, or conspire to deliver, cocaine." (Emphasis in original). Although I agree with the majority's resolution of both issues, I propose a somewhat different analysis.

Bhattal submits that because Gonzalez "repeatedly stated that Mr. Bhattal was not involved with the cocaine transactions involving Gonzalez, Filipi and Prendi," the prosecutor improperly "widen[ed] the scope of the case" "by tying [Bhattal] to previous marijuana deals." Bhattal insists that the marijuana evidence qualified as inadmissible under MRE 404(b), and that its presentation prejudiced his defense. Bhattal acknowledges that background or *res gestae* evidence does not implicate MRE 404(b), but argues that no evidence tended to support that Bhattal's marijuana trafficking evolved into participation in the cocaine conspiracy. The majority adopts an analysis predicted on MRE 404(b), concluding that the marijuana evidence evidenced Bhattal's "knowledge of, and ... intent to participate in, drug trafficking." *Ante* at 6. In my view, MRE 404(b) does not govern the admissibility of the evidence of Bhattal's participation in a marijuana drug enterprise because the prosecutor admitted it to give the jury "an intelligible presentation of the full context in which disputed events took place." *People v*

² As noted in the majority opinion, 12 kilograms of cocaine weigh approximately 26 pounds. *Ante* at 2 n 1.

Sholl, 453 Mich 730, 741; 556 NW2d 851 (1996). Consequently, I disagree with the majority to the extent that it relies on Bhattal’s “intent” and “knowledge” as proper bases for admitting the evidence.³

In *United States v Hardy*, 228 F3d 745, 748 (CA 6, 2000), the United States Court of Appeals for the Sixth Circuit defined “background or res gestae evidence” as consisting of “those other acts that are inextricably intertwined with the charged offense or those acts, the telling of which is necessary to complete the story of the charged offense.” The Sixth Circuit further explained:

Proper background evidence has a causal, temporal or spatial connection with the charged offense. Typically, such evidence is a prelude to the charged offense, is directly probative of the charged offense, arises from the same events as the charged offense, forms an integral part of a witness’s testimony, or completes the story of the charged offense. [*Id.*]

In *United States v Barnes*, 49 F3d 1144, 1149 (CA 6, 1995), a case cited in *Hardy*, 228 F3d at 748, the Sixth Circuit distinguished evidence implicating FRE 404(b) from evidence detailing “a continuing pattern of illegal activity.” The Sixth Circuit characterized evidence admitted under FRE 404(b) as “extrinsic,” because it describes other crimes, wrongs or acts that occur at “different times and under different circumstances from the offense charged.” *Id.* In contrast, conduct “intrinsic” to the charged crime falls outside the scope of FRE 404(b). *Id.*

Here, Gonzalez’s testimony depicting Bhattal’s role in acquiring large quantities of marijuana established that Bhattal and his conspiracy codefendants regularly worked together in furtherance of a unitary drug enterprise. Bhattal’s marijuana activities connected closely in time with the cocaine delivery and involved the same cast of characters. The circumstances surrounding Bhattal’s marijuana-related links to Filipi and Gonzalez provided context to Bhattal’s actions after the police visit to Trevino’s apartment and fleshed out the structure of the conspiracy. In my view, the marijuana evidence tended to prove that Filipi, Gonzalez, Trevino and Bhattal engaged in a single conspiracy to violate drug laws, rather than two separate and distinct enterprises distinguished by differing product lines. “Seemingly independent transactions may be revealed as parts of a single conspiracy by their place in a pattern of regularized activity involving a significant continuity of membership.” *United States v Grassi*, 616 F2d 1295, 1303 (CA 5, 1980).

In reaching this conclusion, I remain mindful that courts should use great care in characterizing evidence as “inextricably intertwined” with a charged offense, lest this avenue of admissibility circumvent MRE 404(b). See *United States v Bowie*, 232 F3d 923, 928 (CA DC, 2000):

³ The record reveals that the prosecutor never invoked MRE 404(b) in support of the admission of the challenged evidence.

[T]reating evidence as inextricably intertwined not only bypasses Rule 404(b) and its attendant notice requirement, but also carries the implicit finding that the evidence is admissible for all purposes notwithstanding its bearing on character, thus eliminating the defense's entitlement, upon request, to a jury instruction. See Fed R Evid 105. There is, as well, a danger that finding evidence "inextricably intertwined" may too easily slip from analysis to mere conclusion. What does the "inextricably intertwined" concept entail? When is a defendant's crime or act so indistinguishable from the charged crime that an item of evidence is entirely removed from Rule 404(b)?

Bearing in mind the cautions expressed in *Bowie*, I believe that the marijuana conspiracy evidence presented here seamlessly blended with Bhattal's actions in furtherance of the cocaine delivery. Instead of representing an entirely separate chapter of Bhattal's life, the marijuana evidence showed a continuing pattern of illegal activity that removed the evidence from the realm of MRE 404(b).

But even excluding any consideration of Bhattal's participation in the marijuana transactions, sufficient evidence existed to convict Bhattal of conspiring to deliver the 12 kilograms of cocaine found inside the Expedition. Given Bhattal's friendship with Ruiz and Filipi, his close association with both of them on the night the police visited Trevino's apartment, and the movement of the ceiling contents the next morning, the prosecutor's circumstantial evidence reasonably tended to establish beyond a reasonable doubt Bhattal's awareness that Trevino's domestic problems had jeopardized the secrecy of a quantity of hidden cocaine. Furthermore, a jury could readily infer that Bhattal rented the Expedition to facilitate transportation of the cocaine from Illinois to Canada, and that he bought a matching cell phone to coordinate communications with his coconspirators.⁴ Moreover, Gonzalez's description of the weight of the bags removed from the taxi office ceiling is consistent with the contents comprising 12 kilograms of cocaine, not marijuana. Because a reasonable probability exists that the laptop bags contained cocaine, the jury could have reasonably inferred that Bhattal's actions in removing the bags furthered the interests of the conspiracy. "[T]he prosecution need not negate every reasonable theory consistent with the defendant's innocence, but merely introduce evidence sufficient to convince a reasonable jury in the face of whatever contradictory evidence the defendant may provide." *People v Konrad*, 449 Mich 263, 273 n 6; 536 NW2d 517 (1995). Although Bhattal argues that Gonzalez exculpated him by testifying that Bhattal lacked awareness of the cocaine conspiracy, a jury could have disbelieved Gonzalez's testimony on this point. "The trier of fact is free to believe or disbelieve, in whole or in part, any of the evidence

⁴ The evidence shows that someone other than Bhattal drove the Expedition to Michigan, and Bhattal's awareness that the vehicle he rented at O'Hare airport had been driven to Michigan. In light of this evidence, a jury could reasonably infer that Bhattal traveled to Michigan on March 28, 2007 in furtherance of the conspiracy's objectives.

presented at trial.” *People v Eisenberg*, 72 Mich App 106, 115; 249 NW2d 313 (1976). For these reasons, I agree with the majority that sufficient clear and convincing evidence supports Bhattal’s conviction for conspiring to deliver more than 1,000 grams of cocaine.

/s/ Elizabeth L. Gleicher