STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 10, 2014
v	No. 311936 Genesee Circuit Court
ELIAS ABUELAZAM, Defendant-Appellant.	LC No. 10-028017-FC

Before: RIORDAN, P.J., and DONOFRIO and FORT HOOD, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of first-degree premeditated murder, MCL 750.316(1)(a). Defendant was sentenced to life in prison. We affirm.

I. FACTUAL BACKGROUND

During 2010, several stabbings occurred in and around Flint, Michigan, under circumstances that indicated it was the same person committing the attacks. Each of the stabbings occurred on deserted streets during the early morning hours, most of the victims were African American males, and a green/beige SUV was frequently observed alongside the curb near the targeted victims. The driver of the SUV typically would ask the victims for assistance, and when the victims would offer their aid, the driver attacked the victim.

At issue in this case is the last stabbing that occurred on August 2, 2010. A police officer driving near Atherton Road in Flint discovered the victim lying on the ground. The victim had been stabbed twice, once in the lower chest area and once in the abdomen. He was bleeding heavily, but was able to tell the police that his attacker was white. Although the victim was taken to the hospital, he eventually died from his wounds. Video surveillance from a nearby market showed a partially green SUV driving to and leaving from the crime scene.

After the stabbing, a member of the community called a tip hotline and reported that the sketch of the perpetrator, resulting from a previous stabbing, resembled defendant, her father's new coworker at a local supermarket. She also reported that defendant's vehicle fit the description of the green SUV. An officer with the Custom and Border Protection (formerly US Customs) also received defendant's name and information that defendant was linked to stabbings in Virginia and Michigan. The officer learned that defendant had a history of traveling to and

from Israel, and discovered that defendant was on his way to Israel. Defendant then was apprehended at the Atlanta airport while his flight to Tel Aviv was boarding.

A forensic scientist testified that she compared DNA samples from defendant and the victim to blood found on shoes and jeans found in defendant's luggage. She determined that the blood on the shoes and jeans came from the victim. She also determined that blood from the car defendant was driving matched the victim's DNA as well as defendant's. A Michigan State Police trooper testified that defendant's phone position correlated with the area where the victim was stabbed, as well as the location of other attacks.

At trial, defendant presented an insanity defense. His expert testified that defendant was a paranoid schizophrenic and at the time of the stabbings he did not understand his conduct was wrong. The expert further opined that defendant experienced bizarre delusions and believed evil forces made him harm others. However, the state's three witnesses—a supervisor manager at a forensic psychiatry center, a psychiatrist, and a psychologist—disagreed with that diagnosis. They explained that defendant's behavior in seeking out solitary victims was indicia of a plan, and was goal directed behavior. They further testified that defendant's behavior was inconsistent with paranoid schizophrenia. As the state's psychiatrist explained, defendant "appreciated that what he was doing was wrong. . . . He went on dark roads, picked out victims, had weapons available to him, left the scene of his behavior, actually tried to leave the country and but for luck and good police work would've been in Israel. So he knew that his behavior was wrong."

The jury found defendant guilty of first-degree premeditated murder. He was sentenced to life in prison. Defendant now appeals on several grounds.

II. CHANGE OF VENUE

A. STANDARD OF REVIEW

Defendant first argues that the trial court erred in denying his motion for a change of venue.[1] We review a trial court's decision to deny a motion to change venue for an abuse of discretion. *People v Jendrzejewski*, 455 Mich 495, 500; 566 NW2d 530 (1997). "A trial court abuses its discretion when its decision falls outside the range of reasonable and principled outcomes." *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008). Questions of law are reviewed de novo. *People v Lanzo Constr Co*, 272 Mich App 470, 474; 726 NW2d 746 (2006).

B. ANALYSIS

[1] While the prosecution argues that defendant waived this issue, defendant filed a motion to change venue because of pretrial publicity. Although defense counsel expressed satisfaction with the jury selection, it was with an implicit understanding that the trial court's decision on the motion to change venue was still pending.

"Generally, criminal defendants must be tried in the county where the crime was committed." *People v Unger*, 278 Mich App 210, 253; 749 NW2d 272 (2008). However, a court "upon good cause shown by either party may change the venue . . . and direct the issue to be tried in the circuit court of another county[.]" MCL 762.7. Ultimately, "[t]he right to jury trial guarantees to the criminally accused a fair trial by a panel of impartial, indifferent jurors." *Unger*, 278 Mich App at 254 (quotation marks and citations omitted).

In regard to pretrial publicity, "the initial question is whether the effect of pretrial publicity . . . was such unrelenting prejudicial pretrial publicity that the entire community will be presumed both exposed to the publicity and prejudiced by it, entitling the defendant to a change of venue." *Jendrzejewski*, 455 Mich at 501 (quotation marks, citation, and brackets omitted). Merely because jurors were exposed to news accounts about the crime does not give rise to a presumption that defendant's due process rights were violated or that he is entitled to a change of venue. *People v DeLisle*, 202 Mich App 658, 664-665; 509 NW2d 885 (1993). Instead, a defendant must show "there is either a pattern of strong community feeling against him and that the publicity is so extensive and inflammatory that jurors could not remain impartial when exposed to it, or that the jury was actually prejudiced or the atmosphere surrounding the trial was such as would create a probability of prejudice." *People v Cline*, 276 Mich App 634, 639; 741 NW2d 563 (2007) (quotation marks and citation omitted); see also *Jendrzejewski*, 455 Mich at 500-501 ("Community prejudice amounting to actual bias has been found where there was extensive highly inflammatory pretrial publicity that saturated the community to such an extent that the entire jury pool was tainted, and, much more infrequently, community bias has been implied from a high percentage of the venire who admit to a disqualifying prejudice.").

Moreover, "[c]onsideration of the quality and quantum of pretrial publicity, standing alone, is not sufficient to require a change of venue. The reviewing court must also closely examine the entire voir dire to determine if an impartial jury was impaneled." *Jendrzejewski*, 455 Mich at 517. "Whether a defendant's conviction will be reversed depends on whether, under the totality of circumstances, the defendant's trial was not fundamentally fair and held before a panel of impartial, indifferent jurors." *DeLisle*, 202 Mich App at 665 (quotation marks and citations omitted). As this Court has explained, "even the existence of preconceived notions regarding guilt or innocence is not enough to rebut the presumption of impartiality where the juror states that those opinions can be set aside and the case can be decided on the evidence presented at trial." *Id.*

Defendant cites four news articles in support of his claim that he was denied a fair trial in Genesee County. Defendant did not cite these articles in support of his motion for a change of venue in the trial court. He merely highlights the fact that there was pretrial publicity. As we have articulated, "the existence of pretrial publicity, standing alone, does not necessitate a change of venue." *Cline*, 276 Mich App at 639 (quotation marks and citation omitted). The specific articles defendants cite fail to support his argument that a change of venue was required. Three of the articles are from national news sources, with only one originating from a local Michigan news source. Moreover, the articles are fact-based, not sensational. Although they discuss residents' fears, they do so without sensationalizing the stabbings, and do not appear aimed at inciting racial fear or hatred.

Further, defendant has failed to demonstrate that the jury impaneled in this case was biased. As stated above, "even the existence of preconceived notions regarding guilt or innocence is not enough to rebut the presumption of impartiality where the juror states that those opinions can be set aside and the case can be decided on the evidence presented at trial." *DeLisle*, 202 Mich App at 665. While defendant points to potential jurors who formed an opinion about the case before trial, none of them testified that they were unwilling to set aside those opinions or unable to decide the case based on the evidence presented at trial.

Thus, "defendant has failed to show that the media coverage was anything other than nonsensational, factual coverage. There is no evidence that the coverage was invidious or inflammatory, as opposed to simple factual news reporting." *Unger*, 278 Mich App at 255. Nor has defendant established that the news coverage revealed prejudicial information. Therefore, we find that the trial court did not abuse its discretion in denying defendant's motion for a change of venue.

III. OTHER ACTS EVIDENCE

A. STANDARD OF REVIEW

Defendant next argues that the trial court violated his right to due process through admitting evidence of the other stabbings. "This Court reviews a trial court's evidentiary ruling for an abuse of discretion," which occurs "when the trial court reaches a result that is outside the range of principled outcomes." *People v Benton*, 294 Mich App 191, 195; 817 NW2d 599 (2011).

B. ANALYSIS

MRE 404(b)(1) provides that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person" but may "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." As the Michigan Supreme Court has elucidated, "[e]vidence relevant to a noncharacter purpose is *admissible* under MRE 404(b) *even if* it also reflects on a defendant's character. Evidence is *inadmissible* under this rule *only* if it is relevant *solely* to the defendant's character or criminal propensity." *People v Mardlin*, 487 Mich 609, 615-616; 790 NW2d 607 (2010) (emphasis in original). The Court also set forth the proper framework in which to analyze MRE 404(b) evidence: (1) the evidence must be offered for a proper purpose under MRE 404(b); (2) the evidence is relevant under MRE 401 and 402; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice, as required by MRE 403. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993).

On appeal, defendant only challenges the third prong, namely, that the probative value of the evidence was substantially outweighed by the danger of unfair prejudice, MRE 403. Defendant posits that the probative value of the other acts evidence was minimal, as the prosecution already had "forensic evidence" that "linked" defendant "to the death" of the victim. However, as the Michigan Supreme Court has recognized, "[b]ecause the prosecution must carry

the burden of proving every element beyond a reasonable doubt, regardless of whether the defendant specifically disputes or offers to stipulate any of the elements, the elements of the offense are always 'in issue' and, thus, material." *People v Crawford*, 458 Mich 376, 389; 582 NW2d 785 (1998).

Thus, even if defendant did not challenge his killing of the victim, the prosecution still had to produce evidence of the intentional killing done with premeditation and deliberation. See *People v Bennett*, 290 Mich App 465, 472; 802 NW2d 627 (2010) ("The elements of first-degree murder are (1) the intentional killing of a human (2) with premeditation and deliberation."). The other acts evidence was highly relevant to that inquiry. See *People v Sabin*, 463 Mich 43, 56-57; 614 NW2d 888, 896 (2000), quoting MRE 401 ("relevant evidence as 'evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.' "). Evidence of defendant's established pattern of seeking out and stabbing solitary victims in deserted areas during the early morning hours made it more likely that, in this case, defendant acted with a premeditated and deliberate plan when he stabbed the victim. Also, the fact that defendant asserted an insanity defense was not an admission of premeditation and deliberation. To the contrary, defendant relied on the insanity defense to rebut any contention that he acted with premeditation and deliberation. Thus, the other acts evidence was probative of whether defendant's actions involved deliberate, purposeful conduct, and to rebut his assertion that he did not understand the nature of his conduct.

Moreover, defendant has not established any unfair prejudice. While "[a]ll relevant evidence is prejudicial . . . it is only unfairly prejudicial evidence that should be excluded." *People v McGhee*, 268 Mich App 600, 613-614; 709 NW2d 595 (2005). "Unfair prejudice exists when there is a tendency that evidence with little probative value will be given too much weight by the jury." *Id.* at 614. As noted above, the other acts evidence was highly probative of a material issue in the case: whether defendant acted with premeditation and deliberation. The trial court also exercised caution in limiting the amount of other acts evidence the prosecution could present. Defendant also fails to demonstrate that such evidence was introduced merely as an attempt to inject "considerations extraneous to the merits of the lawsuit, e.g., the jury's bias, sympathy, anger, or shock." *McGhee*, 268 Mich App at 614. Furthermore, the trial court instructed the jury that defendant was not on trial for other acts and advised the jury on the limited, permissible purpose of the other acts evidence, thereby reducing any potential for unfair prejudice. Jurors are presumed to follow their instructions. *People v Petri*, 279 Mich App 407, 414; 760 NW2d 882 (2008).

The trial court did not abuse its discretion in admitting evidence of defendant's prior acts under MRE 404(b)(1).

IV. MOTION FOR MISTRIAL

A. STANDARD OF REVIEW

Defendant next argues that the trial court erred in denying his motion for a mistrial based on the use of the term "serial" in describing the series of stabbings. We review a trial court's denial of a motion for a mistrial for an abuse of discretion. *People v Schaw*, 288 Mich App 231,

236; 791 NW2d 743 (2010). The trial court abuses its discretion by choosing an outcome that is outside the range of principled outcomes. *Id.* "A trial court should grant a mistrial only for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to get a fair trial." *Id.* (quotation marks and citation omitted).

B. ANALYSIS

At trial, the prosecution informed the court that it would instruct witnesses to avoid using the term "serial" in accordance with the trial court's instructions, but it acknowledged that some witnesses might inadvertently use the term. At trial, one witness recounted seeing a news report on television and stated that she "seen [sic] when the serial killer got—". Defense counsel immediately objected and the court instructed the witness to refer to "the person." A police officer also testified about the investigation and referred to a "serial stabbing." The defense counsel objected and the officer continued using the phrase "other stabbings" instead.

We discern no indication that the prosecutor's questioning was calculated to elicit the objectionable terms. "As a general rule, unresponsive testimony by a prosecution witness does not justify a mistrial unless the prosecutor knew in advance that the witness would give the unresponsive testimony or the prosecutor conspired with or encouraged the witness to give that testimony." *People v Hackney*, 183 Mich App 516, 531; 455 NW2d 358 (1990). Further, the court was careful to advise the jury that it could not convict defendant because of other bad acts. Thus, the isolated and fleeting references to "serial" did not impair defendant's right to a fair trial. The trial court's instructions also sufficiently protected defendant's rights and cured any perceived prejudice.

The trial court did not abuse its discretion in denying defendant's motion for a mistrial.

V. CRIME VICTIMS' RIGHTS ASSESSMENT FEE

Finally, the defendant argues that the trial court erred in assessing a fee of $130 pursuant to the Crime Victims' Rights Assessment because at the time he committed the crime, the fee only was $60. However, the Michigan Supreme Court recently addressed this issue, and held that "that the trial court's order requiring defendant to pay a $130 crime victim's rights assessment does not violate the bar on ex post facto laws." *People v Earl*, __Mich App__; __NW2d__ (Docket No. 145677, issued March 26, 2014) (slip op at 1). Thus, defendant's argument is meritless.

VI. CONCLUSION

Defendant has shown no error in the trial court's denial of his motion to change venue, the court's admission of other acts evidence, the court's refusal to grant a mistrial, or with the assessment of the $130 victims' rights fee. We affirm.

/s/ Michael J. Riordan
/s/ Pat M. Donofrio
/s/ Karen M. Fort Hood