STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 24, 2014
v	No. 314734 Washtenaw Circuit Court
GARY LAMONT GUSTER, Defendant-Appellant.	LC No. 12-000037-FH

Before: JANSEN, P.J., and SAAD and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals by right his jury-trial conviction of first-degree home invasion, MCL 750.110a(2)(b), for which he was sentenced as a fourth habitual offender, MCL 769.12, to a term of 100 to 300 months in prison. We affirm.

Defendant entered the East Quad dormitory at the University of Michigan and entered Room 301, which was marked with three names. One roommate was present, asleep in her bed. Another roommate was walking back to the room, but she stopped in the hallway and saw defendant in the room. Defendant stared at the sleeping roommate; moments later, defendant looked inside all three roommates' closets. Defendant then noticed the roommate who was standing in the hallway. She asked defendant what he was doing in the room, and defendant said that he was looking for a bathroom. She told him that the bathroom was downstairs and defendant ran away. A day later, the sleeping roommate noticed that a wallet was missing from her desk.

Defendant first argues that the trial court erred by admitting other-acts evidence in violation of MRE 404(b). At trial, the prosecution introduced evidence that defendant had entered a fraternity house at the University of Michigan, where he stole a money clip from a student's room. When the student saw defendant leaving the house, defendant informed the student that he was looking for a bathroom. We review the trial court's decision to admit this type of evidence for an abuse of discretion. *People v Gipson*, 287 Mich App 261, 262; 787 NW2d 126 (2010). "Prior bad acts evidence is admissible if: (1) a party offers it to prove 'something other than a character to conduct theory' as prohibited by MRE 404(b); (2) the evidence fits the relevancy test articulated in MRE 402, as 'enforced by MRE 104(b)'; and (3) the balancing test provided by MRE 403 demonstrates that the evidence is more probative of an issue at trial than substantially unfair to the party against whom it is offered, defendant in this

case." *People v Hawkins*, 245 Mich App 439, 447-448; 628 NW2d 105 (2001) (citation omitted).

The evidence was offered for the proper purpose of showing a common plan or scheme because there was a "concurrence of common features" that showed defendant's "individual manifestations of a general plan" to target students and then act as if he was merely looking for a bathroom. *People v Hine*, 467 Mich 242, 251; 650 NW2d 659 (2002). Moreover, the evidence was offered for the purpose of showing intent and the absence of mistake because the evidence was admissible to show that it was "objectively improbable" that defendant was merely inside looking for a bathroom at the time of the instant crime. *People v Mardlin*, 487 Mich 609, 616-617; 790 NW2d 607 (2010). Second, the evidence was relevant. MRE 401. First-degree home invasion is committed in part when a defendant either intends when entering to commit a larceny in the dwelling or at any time while entering, present in, or exiting the dwelling commits a larceny. *People v Wilder*, 485 Mich 35, 43; 780 NW2d 265 (2010). Thus, defendant's intent to commit a larceny was in issue. Defendant's prior act had a "concurrence of common features" and was probative of defendant's general plan to target students, steal wallets or purses, and then, when caught, act as if he was merely looking for a bathroom. *Hine*, 467 Mich at 251. As already noted, defendant's prior act was also relevant to show that it was "objectively improbable" that defendant was merely inside the dorm looking for a bathroom. *Mardlin*, 487 Mich at 616. The challenged evidence thus made it more probable that defendant, without mistake, entered into Room 301 with the intent to commit larceny. *Hawkins*, 245 Mich App at 449.

Moreover, the evidence's probative value was not substantially outweighed by the danger of unfair prejudice. MRE 403. The evidence was highly probative of defendant's common plan or scheme, intent to commit larceny, and lack of mistake. There is no evidence that the other acts were "given undue or preemptive weight by the jury," *Crawford*, 458 Mich at 398, or that the evidence injected "considerations extraneous to the merits of the lawsuit," *People v Goree*, 132 Mich App 693, 702-703; 349 NW2d 220 (1984). Finally, the jury received an appropriate limiting instruction. See *People v Gibson*, 219 Mich App 530, 534; 557 NW2d 141 (1996). The trial court did not abuse its discretion by admitting the other-acts evidence.

Defendant next argues that there was insufficient evidence to support his conviction of first-degree home invasion. We disagree. First-degree home invasion can be committed in several ways, including when a defendant: (1) enters a dwelling without permission; (2) either intends when entering to commit a larceny or at any time while entering, present in, or exiting the dwelling commits a larceny; and (3) another person is lawfully present in the dwelling. *Wilder*, 485 Mich at 43. Here, the evidence overwhelmingly established that defendant did not have permission to enter Room 301, that another person was lawfully present in Room 301 at the time defendant entered, and that defendant took and carried away the sleeping roommate's leather wallet. The evidence established that the sleeping roommate had placed her leather wallet on her desk and last noticed it there before defendant was present in the room.

Alternatively, a reasonable jury could have concluded beyond a reasonable doubt that defendant intended to commit a larceny when entering Room 301. See *People v Roper*, 286 Mich App 77, 83; 777 NW2d 483 (2009). It is true that "[i]ntent to commit larceny cannot be presumed solely from proof of the breaking and entering." *People v Uhl*, 169 Mich App 217,

220; 425 NW2d 519 (1988). "However, intent may reasonably be inferred from the nature, time and place of defendant's acts before and during the breaking and entering." *Id*. In this case, a reasonable jury could have concluded that defendant entered the dorm room, confirmed that the roommate was asleep, and then looked through each closet to seek out items to take away without consent. See *id*. Moreover, defendant's flight "indicate[d] [a] consciousness of guilt," *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995), and the other-acts evidence admitted in this case strongly suggested that defendant had a common plan or scheme to commit larceny in this manner and did not end up in the room by mistake or accident. There was sufficient evidence to prove the elements of first-degree home invasion beyond a reasonable doubt.

Affirmed.

/s/ Kathleen Jansen
/s/ Henry William Saad
/s/ Pat M. Donofrio