STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED January 11, 2018
v	No. 336217 Kent Circuit Court
ROBERT BRUCE-LOUIS HALLMAN, Defendant-Appellant.	LC No. 16-004594-FC

Before: METER, P.J., and BORRELLO and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals by right his convictions, following a jury trial, of first-degree murder, MCL 750.316, felon in possession of a firearm (felon-in-possession), MCL 750.224f, and carrying a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant as a third-offense habitual offender, MCL 769.11, to life without the possibility of parole for his first-degree murder conviction, 4 to 10 years' imprisonment for the felon-in-possession conviction, and 2 years' imprisonment for the felony-firearm conviction. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

This case arises out of a shooting that occurred on March 9, 2016, in an apartment complex located in Grand Rapids, Michigan. Before the shooting, defendant, Stroy Pittman, Anthony Finley, Will Ferrell, and Jeffery Johnson were drinking and doing drugs together in Finley and Johnson's apartment. Pittman (who lived next door) and defendant had an altercation that became physical. After Johnson separated the two men, defendant left the premises. Later, someone entered the apartment and shot Pittman 21 times with a rifle. Ferrell told police that he believed that defendant had fired the shots, but Ferrell, Johnson, and Finley were not able to definitively identify defendant as the shooter. Ferrell's belief was based in part on the knowledge that defendant owned an assault rifle. Johnson also testified that he had seen defendant in possession of a rifle two to three weeks before the shooting. Both witnesses described the rifle as "Army fatigue" in color, with a case and a scope. A neighbor, Ernest Rogers, testified that he had observed someone exit an "orange'ish [sic]" pickup truck carrying what appeared to be a gun; after the gunshots, Rogers saw someone get into the same truck and drive away. Defendant drove a maroon or burgundy pickup trick. Surveillance video of the

parking lot confirmed that a man exited a pickup truck with an unidentified object in his hand before the shooting and returned to the truck and drove away after the shooting.

Thirty-one .223 caliber shell casings were found at the scene. A search of defendant's home revealed two .223 caliber shell casings, a gun case, two gun magazines, a scope, and unfired .223 ammunition. One of the shell casings found in defendant's backyard was the same brand as those found at the scene of the shooting. No rifle was ever recovered.

Defendant testified that a rifle in a case had been stored in his truck that evening, but that it belonged to Ferrell, and that Ferrell had placed the rifle in defendant's bedroom earlier that evening. Defendant further testified that he left the apartment after the altercation and was driving himself to the hospital because of chest pains when he was stopped by police. No weapons, ammunition, or forensic evidence was found in defendant's truck.

The prosecution introduced evidence, under MRE 404(b), that defendant had fired a rifle at two other individuals on two separate occasions (once in 2008 and again in 2012) after arguing with them while intoxicated.

Defendant was convicted as stated. This appeal followed.

II. OTHER-ACTS EVIDENCE

Defendant first argues that evidence of the two prior shooting incidents was inadmissible under MRE 404(b). We disagree.

We review for an abuse of discretion a trial court's decision to admit or deny evidence. *People v Benton*, 294 Mich App 191, 195; 817 NW2d 599 (2011). "[A]n abuse of discretion standard acknowledges that there will be circumstances in which there will be no single correct outcome; rather, there will be more than one reasonable and principled outcome." *Maldonado v Ford Motor Co*, 476 Mich 372, 388; 719 NW2d (2006). Further, "[w]hen the trial court selects one of these principled outcomes, the trial court has not abused its discretion and, thus, it is proper for the reviewing court to defer to the trial court's judgment." *Id*. Even if admitted in error, reversal is not required unless, with regard to the remaining properly admitted evidence, it appears "more probable than not that a different outcome would have resulted without the error." *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999). We review de novo preliminary questions of law, such as the interpretation of statutes and court rules. *Id*. at 488.

Evidence introduced at trial must be relevant; evidence is relevant if it has "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." MRE 401. Relevant evidence is generally admissible. MRE 402. "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." MRE 403. "Unfair prejudice may exist where there is a danger that the evidence will be given undue or preemptive weight by the jury or where it would be inequitable to allow use of the evidence." *People v Blackston*, 481 Mich 451, 462; 751 NW2d 408 (2008).

The admissibility of other-acts evidence is governed by MRE 404(b)(1), which states as follows:

> 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 admit evidence of other acts under MRE 404(b) in a criminal prosecution, the trial court must conclude that: (1) the evidence is offered for a proper purpose and not merely to prove the defendant's character or propensity to commit the crime; (2) it is relevant to a material issue or fact at trial; and (3) the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice. *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993). Further, "evidence that is admissible for one purpose does not become inadmissible because its use for a different purpose would be precluded." *Id*. Finally, "upon request, the trial court may provide a limiting instruction to the jury under MRE 105 to specify that the jury may consider the evidence only for proper, noncharacter purposes." *People v Jackson*, 498 Mich 246, 260; 869 NW2d 253 (2015).

Where other-acts evidence is offered to establish a defendant's identity as one who committed the offense(s) charged, logical relevance can be shown where:

> (1) there is substantial evidence that the defendant committed the similar act (2) there is some special quality of the act that tends to prove the defendant's identity (3) the evidence is material to the defendant's guilt, and (4) the probative value of the evidence sought to be introduced is not substantially outweighed by the danger of unfair prejudice. [*People v Ho*, 231 Mich App 178, 186; 585 NW2d 357 (1998), citing *People v Golochowicz*, 413 Mich 298, 309; 319 NW2d 518 (1982).]

In addition, other-acts evidence may support an inference that the acts were part of a common plan or scheme with the charged offense, if "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 Hine*, 467 Mich 242, 251; 650 NW2d 659 (2002). "For other acts evidence to be admissible there must be such a concurrence of common features that the uncharged and charged acts are naturally explained as individual manifestations of a general plan." *Id*. Moreover, "[u]nusual and distinctive features are not required to establish the existence of a common design or plan." *Id*. at 252-253.

Defendant argues that evidence of his other acts was inadmissible under MRE 404(b) because the prosecution failed to adequately demonstrate its relevance See *People v Crawford*, 458 Mich 376, 387; 582 NW2d 785 (1998). We disagree. This argument must be addressed in conjunction with defendant's argument that the prior acts were not sufficiently similar to the charged offense to be admitted as evidence of a common scheme or plan. We conclude that the

prosecution demonstrated that the other-acts evidence was offered for the proper purpose of establishing defendant's identity as the shooter and demonstrating defendant's common scheme or plan.

At trial, the prosecution admitted testimony regarding two prior incidents. The first incident occurred in 2008. During that incident, defendant got into an argument with another individual outside defendant's home while intoxicated. As the other man walked away, defendant went into his home, kicked open the front door, and fired a .22 caliber rifle 10 times (presumably out the open door), which defendant characterized at the time as "warning shots." Defendant pleaded guilty to charges stemming from that incident. The second incident occurred in 2012. After leaving a bar, defendant got into an argument with, and threatened to shoot, his then wife and her mother. Later that evening, the mother-in-law discovered bullet holes in her house.

The other-acts evidence was admissible for purposes of showing defendant's identity as the shooter. See MRE 404(b). "[P]roof of a common plan, system, or scheme has been identified as an acceptable method of proving identity." *Golochowicz*, 413 Mich at 325 (stating that when other-acts evidence is presented, the trial court "should insist upon a showing of a high degree of similarity in the manner in which the crime in issue and the other crimes were committed"). There was substantial evidence that defendant was involved in the 2008 and 2012 shootings. See *id*. Defendant pleaded guilty to the 2008 incident. In 2012, according to the mother and police officers at the scene, defendant threatened to shoot his wife, as well as her mother. And the pattern of commonality between the incidents, including the intoxication and arguments followed by the use of a rifle to fire multiple gunshots, helped establish defendant's identity as the shooter in this case. See *id*. This other-acts evidence is material to defendant's guilt because "identity is an element of every offense." See *id*.; *People v Yost*, 278 Mich App 341, 356; 749 NW2d 753 (2008).

Additionally, the 2008 and 2012 incidents were sufficiently similar to the present case to support an inference that they were part of a common scheme or plan. See *Golochowicz*, 413 Mich at 325; *Ho*, 231 Mich App at 186. The 2008 and 2012 incidents demonstrated that defendant would become intoxicated on drugs or alcohol, get into an argument with another individual, leave the immediate area, and shortly thereafter use a rifle to fire numerous bullets toward that individual or house. These similarities would allow a jury to infer that defendant had a behavioral tendency when intoxicated and in an argument to react in a specific manner and to resort to the use of a rifle. See *Golochowicz*, 413 Mich at 325; *Ho*, 231 Mich App at 186. Accordingly, the other-acts evidence demonstrated defendant's common scheme or plan, and was relevant to the charges in this case. MRE 402. *Id*. While there are some differences between defendant's prior conduct and the facts of the instant case, and even if "reasonable minds could differ with regard to whether the charged and uncharged acts contained sufficiently similar features to infer the existence of a common scheme or plan, a trial court's decision on a close evidentiary decision is not an abuse of discretion." *People v Katt*, 248 Mich App 282, 306; 639 NW2d 815 (2001), citing *People v Sabin (After Remand)*, 463 Mich 43, 66-68; 614 NW2d 888 (2000).

Finally, not only was the evidence relevant and highly probative of identity and common scheme or plan, but the probative value of the evidence was not substantially outweighed by the

danger of unfair prejudice. Because there were no witnesses who could definitively identify the shooter, the evidence of the prior shootings was important to ascertaining the shooter's identity. See MRE 403. Yet the jury was not likely to give undue weight to these prior incidents because there was other evidence presented, including that defendant was at the apartment the night of the incident, defendant had been seen with a rifle in the weeks leading up to the incident, ammunition and casings of the same caliber used in the shooting were found at defendant's house, and defendant had been in a fight with Pittman that evening. See *Blackston*, 481 Mich at 462.

Additionally, the trial court gave the jury a limiting instruction regarding the use of the other-acts evidence. The trial court presented the jury with the following instruction:

> You have heard evidence that was introduced to show that the defendant committed other crimes or improper acts for which he is not on trial. Specifically, the 2008 Kentwood issue, and the 2012 Grand Rapids issue. If you believe this evidence, you must be very careful to consider it only for certain purposes. You may only think whether this evidence tends to show proof of motive, opportunity, intent, preparation, scheme, plan, system of doing an act, absence of mistake or accident. You must not consider this evidence for any other purpose. For example, you must not decide that the defendant is a bad person or that he is likely to commit crimes. You must not convict the defendant here because you think he is guilty of other bad conduct. All the evidence must convince you beyond a reasonable doubt that defendant committed these alleged crimes, or you must find him not guilty.

"It is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). Thus, a jury could weigh the weaknesses of the evidence admitted concerning the identity of the shooter against the other evidence available and decide how much weight to give it during deliberations. See *Blackston*, 481 Mich at 462; *Lukity*, 460 Mich at 495; MRE 403. Accordingly, the trial court did not abuse its discretion by admitting the challenged evidence. See *Maldonado*, 476 Mich at 388.

III. SUFFICIENCY OF THE EVIDENCE

Defendant also argues that the prosecution failed to present sufficient evidence of first-degree murder. We disagree.

We review de novo a defendant's challenge to the sufficiency of the evidence. *People v Meissner*, 294 Mich App 438, 452; 812 NW2d 37 (2011). In reviewing sufficiency of the evidence claims, we view the evidence in the light most favorable to the prosecution to determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Nowak*, 462 Mich 392, 399-400; 614 NW2d 78 (2000). We must also "draw all reasonable inferences and make credibility choices in support of the jury verdict." *Id*. at 400.

MCL 750.316 provides, in pertinent part:

> (1) Except as provided in sections 25 and 25a of chapter IX of the code of criminal procedure, 1927 PA 175, MCL 769.25 and 769.25a, a person who commits any of the following is guilty of first degree murder and shall be punished by imprisonment for life without eligibility for parole:
>
> (a) Murder perpetrated by means of poison, lying in wait, or any other willful, deliberate, and premeditated killing.

Accordingly, to establish first-degree premeditated murder, the prosecution must establish that (1) "defendant intentionally killed the victim" and (2) "the killing was premeditated and deliberate." *People v Marsack*, 231 Mich App 364, 370; 586 NW2d 234 (1998). "Premeditation and deliberation require sufficient time to allow the defendant to take a second look." *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). Moreover, "[p]remeditation may be established through evidence of the following factors: (1) the prior relationship of the parties; (2) the defendant's actions before the killing; (3) the circumstances of the killing itself; and (4) the defendant's conduct after the homicide." *Id*. at 537. "Because of the difficulty of proving an actor's state of mind, minimal circumstantial evidence is sufficient to establish a defendant's intent to kill," and that evidence can include a motive to kill, flight, and lying. *People v Unger*, 278 Mich App 210, 223, 225-227; 749 NW2d 272 (2008).

Here, viewing the evidence in the light most favorable to the prosecution, it is clear there was sufficient evidence to support defendant's first-degree murder conviction. Although the prosecution presented mainly circumstantial evidence of defendant's identity as the killer, identity may be inferred from circumstantial evidence alone. See *Unger*, 278 Mich App at 223, 225-227. There was direct evidence that defendant was at the scene of the crime the evening of Pittman's murder and that defendant had earlier argued with Pittman.

Other evidence also supplied reasonable inferences that defendant was the shooter. Even defendant's version of the events of the evening permitted the inference that he had access to a rifle. Further, Ferrell and Johnson testified that they had previously observed defendant with an assault rifle. Surveillance video showed an individual going to a pickup truck and removing an object. Rogers testified that he saw a man leave the same truck with a gun, heard rapid shots, and then witnessed a man leave the apartment, reenter the truck, and drive away. Additionally, police collected a shell casing from defendant's backyard that matched the shell casing recovered at the scene of the shooting. The evidence was sufficient to enable the jury to rationally find that defendant possessed the rifle that evening. See *Johnson*, 293 Mich App at 83.

Further, there is evidence that defendant intended to the kill Pittman and that the shooting was premeditated and deliberate. See *Marsack*, 231 Mich App at 370. Defendant had a motive to kill Pittman, having been in a fight with him earlier in the evening. Defendant had ample time between retrieving the rifle from his truck and walking back inside the apartment to contemplate his actions and to take a second look. See *Anderson*, 209 Mich App at 537. And manner in which defendant killed Pittman, shooting at him more than 30 times and hitting him more than 20 times, including in several major organs and causing many wounds that individually would have been fatal, is an indication of his intent to kill Pittman. See *id*. Also, defendant fled the scene after the shooting. See *id*. The combination of all this evidence, and all reasonable inferences drawn therefrom, is sufficient to establish the elements of first-degree murder.

Although defendant argues that there was evidence (chiefly defendant's own testimony that Ferrell owned the rifle and had it in his bedroom) that Ferrell was the shooter, the prosecution was not required to negate every theory consistent with defendant's innocence. See *People v Hardiman*, 466 Mich 417, 424; 646 NW2d 158 (2002). There was sufficient evidence to support defendant's first-degree murder conviction.

Affirmed.

/s/ Patrick M. Meter
/s/ Stephen L. Borrello
/s/ Mark T. Boonstra