

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

UNPUBLISHED
February 13, 2018

v

TRACY LEE LAWRENCE,

Defendant-Appellee.

No. 339228
Jackson Circuit Court
LC No. 16-004958-FC

Before: RONAYNE KRAUSE, P.J., and FORT HOOD and O'BRIEN, JJ.

PER CURIAM.

In this interlocutory appeal, the prosecution appeals by leave granted the trial court's grant of defendant's motion to admit other-acts evidence of the decedents in defendant's pending trial for two counts of second-degree murder and one count of felony-firearm. We reverse.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

The pertinent facts of this case are generally undisputed. Defendant lives in a rural area. On June 8, 2016, at approximately 6:00 a.m., defendant saw two men walk past the window of his house headed toward where his detached garage and truck were located. As defendant watched, one man checked the handle on the garage door and the other checked the handle on defendant's truck. Defendant assumed the two individuals were going to break into his truck, so he got his .22 caliber rifle and went out on his back porch to confront them. After defendant yelled at the two men, he thought they started running toward him. Defendant started shooting toward the decedents when they passed the trunk of his car. Although he was aiming toward the two men, he thought he was shooting at the ground.

Defendant assumed that he hit one of the men because he saw him go down. While the other man continued to run, defendant continued to shoot until the man was out of sight. When police arrived, they located one man face down approximately 30 yards from the house with a gunshot wound to the back of his head, and the other approximately 100 yards from the house with a gunshot wound in his back. Police found one shell casing on defendant's back porch and five casings in defendant's yard approximately 12 feet away from his porch.

Before trial, defendant sought to admit evidence that the decedents had committed a string of break-ins in the hours leading up to the shooting. The trial court ruled that the evidence of the decedents' "crime spree" that led them to defendant's property was admissible under MRE

404(b) to prove *modus operandi*. The trial court reasoned that the jury “should know that these just aren’t a couple of Jehovah Witnesses walking up to the property, you know, or casually selling something at the door.” The trial court also opined that this evidence had “a logical tendency to prove or disprove at least what the [decedents] were there for.”

II. ANALYSIS

On appeal, the prosecution argues that the trial court erred by concluding that the evidence was admissible under MRE 404(b). We agree.

A. STANDARD OF REVIEW

A trial court’s decision regarding admissibility of evidence is reviewed for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998). But preliminary questions of law surrounding the admission of evidence are reviewed *de novo*. *People v Lane*, 308 Mich App 38, 51; 862 NW2d 446, 456 (2014). A trial court abuses its discretion when it admits evidence that is inadmissible as a matter of law. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607, 609 (1999).

B. RELEVANT CASELAW

MRE 404(b)(1), under which the trial court ruled the evidence admissible, states:

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.

“This Court has previously held that MRE 404(b), now 404(b)(1), applies to the admissibility of evidence of other acts of any person, such as a defendant, *a victim*, or a witness.” *People v Catanzarite*, 211 Mich App 573, 579; 536 NW2d 570 (1995) (emphasis added). To determine whether other-acts evidence is admissible, courts in Michigan follow the *VanderVliet*¹ approach, which requires the following:

First, the prosecutor must offer the “prior bad acts” evidence under something other than a character or propensity theory. Second, the evidence must be relevant under MRE 402, as enforced through MRE 104(b). Third, the probative value of the evidence must not be substantially outweighed by unfair prejudice under MRE 403. Finally, the trial court, upon request, may provide a limiting

¹ *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994).

instruction under MRE 105. [*People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004) (citation and quotation marks omitted).]

The Michigan Supreme Court recently clarified that the second prong of the *VanderVliet* test requires logical relevance as “the ‘touchstone’ of the admissibility of other-acts evidence.” *People v Denson*, 500 Mich 385, 401; 902 NW2d 306 (2017), quoting *Crawford*, 458 Mich at 388. “Other-acts evidence is logically relevant if two components are present: materiality and probative value.” *Denson*, 500 Mich at 401. Materiality requires that other-acts evidence be related to “ ‘any fact that is of consequence’ ” to the case. *Id.*, quoting MRE 401. To be material, the other-acts evidence must be probative of an element of the charged offense or of a defense. See *Denson*, 500 Mich at 401. “Evidence is probative if it tends 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.” *Id.* at 401-402.

C. APPLICATION

In this case, defendant was charged with second-degree murder and argues that he acted in self-defense. Therefore, whether a fact in this case is material depends on the elements of second-degree murder and self-defense. See *id.* at 401. “[T]he elements of second-degree murder are as follows: (1) a death, (2) the death was caused by an act of the defendant, (3) the defendant acted with malice, and (4) the defendant did not have lawful justification or excuse for causing the death.” *People v Smith*, 478 Mich 64, 70; 731 NW2d 411 (2007). With regard to self-defense, “the killing of another person in self-defense is justifiable homicide if the defendant honestly and reasonably believes that his life is in imminent danger or that there is a threat of serious bodily harm.” *People v Heflin*, 434 Mich 482, 502; 456 NW2d 10 (1990).

Evidence of the decedents’ alleged crime spree is not material because it does not tend to prove or disprove any element of second-degree murder or self-defense. Whether the decedents were on a crime spree is not probative of whether defendant acted with malice in causing their deaths. With regard to a self-defense theory, this Court in *People v Crow*, 128 Mich App 477, 483; 340 NW2d 838 (1983), previously explained that

the material inquiry concerns the belief of the defendant that he was in danger of being killed or receiving serious bodily harm. The actual intentions of [the decedent] were not material, nor were those intentions relevant to the only material inquiry, i.e., the defendant’s belief. [Footnote omitted.]

Defendant had no knowledge of the decedents’ alleged criminal activities before he saw them on his property. Therefore, those acts are not probative of the material inquiry: defendant’s belief. See *People v Farrell*, 137 Mich 127, 130; 100 NW 264 (1904) (stating that “it is well settled that it is not admissible to show specific acts of violence committed by deceased upon third persons, in no way connected with nor observed by the defendant, on the ground that such matter is too remote”); *People v Cellura*, 288 Mich 54, 64; 284 NW 643 (1939).

Defendant argues on appeal that “[t]he relevant fact that should be placed in front of the jury is that the [decedents] were not invited guests, and were not legally on [his] property.” However, whether the decedents were, or were not, legally on defendant’s property is not

relevant to whether defendant acted in self-defense or committed second-degree murder.² Whether defendant *believed* that the decedents were on his property illegally may be relevant to his self-defense theory, but the proffered evidence does not establish what defendant did or did not believe.

Reversed.

/s/ Amy Ronayne Krause

/s/ Karen M. Fort Hood

/s/ Colleen A. O'Brien

² Defendant argues that the legality of the decedents' presence on his property was "a fact in issue." However, this is simply not true. At the hearing on defendant's motion, the prosecution stated that it was not disputing this fact and offered to stipulate that the decedents were uninvited and were attempting to break into defendant's garage and vehicle.