STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLAUDE PAUL BRAZIEL III,

Defendant-Appellant.

UNPUBLISHED
February 25, 2021

No. 352193
Washtenaw Circuit Court
LC No. 18-000519-FC

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

PER CURIAM.

Defendant, Claude Paul Braziel, III, appeals as of right his jury trial convictions of felony murder, MCL 750.316(1)(b); and armed robbery, MCL 750.529. The trial court sentenced defendant to life without parole for the felony-murder offense, and 20 to 40 years for the armed robbery offense. On appeal, defendant argues that the trial court erred when it admitted other-acts evidence, that statements he gave to law enforcement should have been suppressed because detectives violated his right against self-incrimination, that insufficient evidence supported his convictions, and that the trial court imposed unreasonable and arbitrary court costs. For the reasons set forth in this opinion, we affirm.

I BACKGROUND

This appeal arises from the 2017 homicide of David Sloss. Brad Nasarzewski, a neighbor in the same apartment complex as the victim and defendant, testified that, on November 29, 2017, he was at his apartment with two other people and that defendant came over at about 9:00 or 9:30 p.m. He testified that he and defendant smoked crack cocaine until they "ran out of money, ran out of drugs." After a conversation about how they could get more drugs, defendant told Nasarzewski that "he was gonna go talk to his mom about something." Nasarzewski testified that he looked out the window and saw defendant walk "over to the apartment where him and his mom were staying." Nasarzewski testified that he stayed in his apartment while defendant was gone.

Nasarzewski testified that defendant eventually returned to his apartment about "an hour, hour-and-a-half" after he left. When defendant returned, he had more crack and possessed about

$120, in two $50 bills and a $20 bill. When the crack ran out again, defendant "went home," around 12:30 or 12:45 a.m.[1]

On November 30, 2017, a neighbor, who testified he saw the victim every day and had a key to his apartment, along with defendant's mother, went to victim's apartment, found the victim's door locked, entered and found the victim dead. He testified that the victim's wallet was laying open on his body.

Detective Mark Neumann of the Washtenaw County Sheriff's Office testified that he interviewed defendant three or four times as part of the investigation into the present case. According to Neumann, defendant's testimony was constantly changing. Detective Neumann testified that, on December 2, 2017, he and another detective picked up defendant from his residence. According to Detective Neumann, defendant "agreed to come to the station and talk to us there previously." Detective Neumann testified that "while we were picking him up, we had a brief conversation with him and he told me at that time that he had nothing to do with this." Defendant stated that "[h]e was at Brad's house all night long[,]"[2] and that he did not see the victim on the night in question. Detective Neumann reiterated that defendant "volunteered" to go to the station, and that once there, he interviewed defendant. After repeating that he was at Nasarzewski's that night and never went home, defendant then changed his story and stated "I went home and I got a hundred dollars 'cause I wanted to buy some crack." After Detective Neumann told defendant that his tether recorded a location behind the building, defendant gave Detective Neumann conflicting stories, including that he went out to his car and that he "peed next to a tree" Eventually, during the same interview, defendant "admitted that he did actually go inside the apartment just for a little," but defendant stated that "Lawerence," an alleged drug dealer, was responsible for the victim's death.

Detective Neumann testified that he next interviewed defendant on December 7, 2017, and on this occasion, defendant was in the Washtenaw County Jail on a different matter. Detective Neumann took a DNA sample from defendant pursuant to search warrant. Detective Neumann testified that, while he was with defendant at his cell, defendant told him that "he had additional information he wanted to share." Defendant told Detective Neumann that he went into the victim's bedroom on the night that the victim died because the victim wanted to show defendant his new suitcase. As the interview was ending, defendant told Detective Neumann that he wanted to "go upstairs" to the detective bureau and talk. Detective Neumann testified that when they reached the detective bureau, he "advised [defendant] of his rights again." Detective Neumann testified that defendant was advised of his rights "several times throughout the entire process. But just to make sure that we're good, I read him his rights again."

Defendant then denied involvement in the victim's death or robbery. According to defendant, then added that . . . while he was in the victim's bedroom, the victim tripped over his

[1] Nasarzewski admitted that he initially told investigators defendant left his apartment at 4:30 a.m.

[2] It appears that "Brad" refers to Nasarzewski.

dog. Later, defendant told Detective Neumann that he and the victim used a knife to unclog two toilets: his own and the victim's.

Detective Neumann testified that, later that same day, defendant reached out to him and wanted to talk again. Defendant again changed his story, but insisted that when he left the victim's apartment, the victim was still alive.

Detective Craig Raisanen of the Washtenaw County Sheriff's Office testified that he also interviewed defendant about the present case, and that defendant told him several of the same varying stories. Detective Raisanen stated that, when he interviewed defendant, defendant was not in custody. Therefore, defendant was not advised of his rights. According to Detective Raisanen, defendant agreed that he was not in custody at the beginning of their interview together, however once Detective Raisanen told defendant that a parole agent was "going to place a detainer on" defendant, he advised defendant of his rights.

Brian Merrill testified that he met defendant when they previously lived in the same prison unit. According to Merrill, defendant told him that the victim was his friend and that they would watch television together. Defendant also told him that "there was no evidence," however, he further testified that he "could just see that the weight of his conscience was on him." Defendant told him that when the victim refused to share his drugs, "that he kind of blacked out, went into a rage. And he eventually said that he stabbed the guy."

Cordell Powell testified that he also knew defendant from when they were incarcerated together. Powell testified that defendant told him about a "person that had got stabbed so many times where it had kind of ripped his face and his throat open." Powell testified that defendant was "kind of bragging" about what happened and said that "they don't have anything on me. The knife that they think I used, they took it out of my mom's garden. They're not gonna find anything on that." Powell testified that defendant told him that it happened inside the victim's apartment, across the hall from his mom's. According to Powell:

> His intention was to take some drugs, or money, or what not from the apartment. And in the midst of doing so, I think the older guy kind of—like kind of defended—wanted to defend hisself (sic) or put him out and what not. And [defendant] kind of like strong-armed him. Like just wasn't going for it.

When asked what defendant told him about what happened after the stabbing, Powell testified:

> He left out. He locked the door. Left out. He showed me—he did show me some paper with his—with a GPS tracking thing. Like I think he had a tether on at the moment. And he let me know like that he was still in their vicinity. Like they all couldn't pinpoint exactly where he was 'cause it all showed the same place. So he say he went back to his mom house, and then he said he went back to his home boy's house and he continued to get high.

Defendant did not testify and presented no witnesses. The jury convicted defendant as indicated above, and following a sentencing hearing, this appeal ensued.

II ANALYSIS

On appeal, defendant argues that the trial court erred by admitting other-acts evidence under MRE 404(b). Specifically, defendant argues that Detective Neumann's testimony as to defendant's actions related to a 2007 conviction of AWIGBH was irrelevant and was offered solely to demonstrate propensity. Additionally, the testimony was unfairly prejudicial because it distracted the jury from the lack of evidence tying defendant to the victim's murder.

The prosecutor argues that the trial court did not abuse its discretion because the testimony concerning defendant's 2007 conviction of AWIGBH was relevant and offered for a proper purpose. The probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. The evidence was probative of defendant's identity, intent, motive, and method or operation in committing this crime. Even if the trial court erred by admitting the prior-acts evidence, the prosecutor argues, the evidence was not outcome-determinative.

We review for an abuse of discretion preserved claims of evidentiary error. See *People v Bergman*, 312 Mich App 471, 482; 879 NW2d 278 (2015). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *Id*. at 483 (quotation marks and citation omitted). "If the court's evidentiary error is nonconstitutional and preserved, then it is presumed not to be a ground for reversal unless it affirmatively appears that, more probably than not, it was outcome determinative—i.e., that it undermined the reliability of the verdict." *People v Douglas*, 496 Mich 557, 565-566; 852 NW2d 587 (2014) (quotation marks and citation omitted).

In *People v Vandervliet*, 444 Mich 52, 74; 508 NW2d 114 (1993), our Supreme Court explained that other-acts evidence is admissible if it complies with a three-part test: (1) it must be offered for a proper purpose, (2) it must be relevant, and (3) its probative value cannot be substantially outweighed by unfair prejudice. To have a proper purpose, "[t]he evidence must be relevant to an issue other than propensity." *Id.* "Relevant other acts evidence does not violate Rule 404(b) unless it is offered solely to show the criminal propensity of an individual to establish that he acted in conformity therewith." *Id*. at 65.

The proponent of evidence bears the burden of establishing relevance and admissibility. *People v Martin*, 271 Mich App 280, 316; 721 NW2d 815 (2006). Other-acts evidence must be "logically relevant to show that the charged act occurred where 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 Sabin (After Remand)*, 463 Mich 43, 63; 614 NW2d 888 (2000). This entails "not merely a similarity in the results, *but such a concurrence of common features that the various acts are naturally to be explained as caused by a general plan of which they are the individual manifestations*." *Id*. at 64-65. "The remoteness" of time "of the other act affects the weight of the evidence rather than its admissibility." *People v Brown*, 294 Mich App 377, 387; 811 NW2d 531 (2011).

In *People v Watkins*, 491 Mich 450, 487-488; 818 NW2d 296 (2012), our Supreme Court explained that, when considering whether to exclude other-acts evidence under MRE 403, a court should consider:

> (1) the dissimilarity between the other acts and the charged crime, (2) the temporal proximity of the other acts to the charged crime, (3) the infrequency of the other acts, (4) the presence of intervening acts, (5) the lack of reliability of the evidence supporting the occurrence of the other acts, and (6) the lack of need for evidence beyond the complainant's and the defendant's testimony.

At a pretrial hearing, the prosecutor represented that Detective Neumann's testimony was being offered to show a common plan or scheme to establish identity, a proper purpose. See MRE 404(b)(1). Detective Neumann testified that he first encountered defendant in 2007 while investigating a prior case. Detective Neumann testified that, in that case, a woman "was found by friends in her home with severe head injuries sitting on the floor, bleeding of her [sic] trailer home." The woman "had been hit with some sort of an object, and she was also missing several pieces of jewelry." Detective Neumann testified that, in the 2007 case, when neighbors discovered the victim, her door was locked. Detective Neumann also testified that defendant provided different versions of his story during his interviews regarding the 2007 incident. At first, defendant provided one version of the story. But defendant went from denial to slowly adding more details, including blaming someone else for the incidents that occurred. Detective Neumann eventually summarized:

> So there were, you know to me, a lot of similarities between this. He blames, you know, some random black male drug dealer for doing something that he in fact did. He uses his mom as a reason to be scared to give information about whoever he's pushing this off on. And just obviously, the very nature of this.
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> He had told me that at the end of that, that the reason he had done this is because he was on drugs and that, you know, he was out his mind, and needed more, and he needed the money. And that's just kind of the effect it has on him. So that's why he ended up doing that. It's outside of his character, but drugs are what makes this happen.

The details provided in Detective Neumann's testimony constitute legally sufficient common features to establish a rational inference of a common plan or scheme. *Sabin*, 463 Mich at 63-65.

As to MRE 403, the probative value of the evidence—establishing defendant's identity through a common plan or scheme—does not appear to have been substantially outweighed by unfair prejudice. Here, the two acts appeared fairly similar. Furthermore, the testimony appeared reliable because Detective Neumann worked the prior case and defendant was convicted of the other act. We note that the prior act was over a decade old; however, remoteness of time goes to weight and not admissibility. *Brown*, 294 Mich App at 387.

Even excluding the prosecution's other-acts evidence, a rational fact-finder could have concluded that the prosecution met its burden to prove that *defendant* committed felony murder and armed robbery in connection with the victim's death. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). As stated above, a neighbor testified that defendant was in his apartment, left, headed in the direction of the victim's apartment, returning a short time later with drugs and cash.

Neighbors and police who found the victim testified that his wallet was empty of cash, and one neighbor testified that he knew for certain the victim had cash on the date of his death.

Additionally, defendant essentially confessed committing the crime to two persons he met while incarcerated. Both testified that defendant bragged about the police not being able to find any evidence to use against him. Both also testified to specific details about the crime, including the manner in which the crime was committed and the weapon that was used to kill the victim.

A detective testified that, during the time that defendant was gone from the neighbor's apartment, GPS data from defendant's tether placed him on the side of the building where his and the victim's apartments were. A detective also testified that the GPS location data taken from defendant's tether was only accurate in a range of several feet (maybe even 15), but witnesses testified that defendant's and the victim's apartments were only four or five apart. An expert testified that DNA testing provided "very strong support" that defendant's DNA was present on the victim's fingernails.

Defendant admitted (eventually) that he was in the victim's apartment on the day or evening of the murder. Further, according to the testimony of officers who questioned defendant, he kept changing his story. At first, defendant had not seen the victim on the date in question, however, by the end of their questioning he had admitted to being in the victim's apartment, witnessing blood on the floor of the apartment, and seeing the victim fall and hit his head. Viewing this circumstantial evidence in the light most favorable to the prosecution, the jury could have reasonably concluded that defendant was in the victim's apartment on the night in question, and by extension, that he committed felony-murder and armed robbery. As instructed by our Supreme Court: "[i]f the court's evidentiary error is nonconstitutional and preserved, then it 'is presumed not to be a ground for reversal unless it affirmatively appears that, more probably than not, it was outcome determinative'---i.e., that 'it undermined the reliability of the verdict'" *Douglas*, 496 Mich at 565-566. (citations omitted). Based on this evidence presented at trial, we conclude that the complained of error was not outcome determinative, hence, even if the trial court abused its discretion by admitting the other-acts evidence, the is insufficient grounds for reversal. *Id*.

Next, defendant argues that detectives violated his privilege against self-incrimination. Defendant also argues that his trial counsel was ineffective for failing to move for suppression of statements that he made to these detectives during various interrogations and interviews. Because defendant did not object to the detectives' testimonies and did not move for a new trial or an evidentiary hearing on the basis of ineffective assistance of counsel, this issue is unpreserved. See *People v Borgne*, 483 Mich 178, 184; 768 NW2d 290 (2009); see also *People v Sabin (On Remand)*, 242 Mich App 656, 658; 620 NW2d 19 (2000). Despite requests, defendant also did not provide this Court with People's Exhibit 51: the recordings of defendant's interviews with detectives. Defendant was required to provide this Court "with a record to verify the factual basis of any argument upon which [a request for] reversal [is] predicated." *People v Elston*, 462 Mich 751, 762; 614 NW2d 595 (2000). This burden includes providing this Court with exhibits offered into evidence. MCR 7.210(C). Therefore, because we cannot verify that any error is apparent on the record, we decline to review this issue. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *People v Matuszak*, 263 Mich App 42, 48; 687 NW2d 342 (2004). And to the extent that

defendant argues that trial counsel was ineffective for failing to request a *Walker*[3] hearing, again, without a record to verify the basis for the argument, this Court cannot properly review the issue.

Defendant also argues that the prosecution presented insufficient evidence to support his convictions because no witnesses saw defendant enter or leave the victim's apartment on the night in question.

Due process requires that a conviction is supported by "sufficient evidence to justify a rational trier of fact in finding guilt beyond a reasonable doubt." *People v Johnson*, 460 Mich 720, 722-723; 597 NW2d 73 (1999) (quotation marks and citation omitted). Again, this Court must review the evidence in the light most favorable to the prosecution. *Wolfe*, 440 Mich at 515.

"The elements of felony murder are (1) the killing of a human being, (2) with the intent to kill, to do great bodily harm, or to create a very high risk of death or great bodily harm with knowledge that death or great bodily harm was the probable result, (3) while committing, attempting to commit, or assisting in the commission of any of the felonies specifically enumerated in MCL 750.316(1)(b)." *People v Gayheart*, 285 Mich App 202, 210; 776 NW2d 330 (2009), lv den 486 Mich 957 (2010). Among the enumerated felonies in MCL 750.316(1)(b) is "larceny of any kind." MCL 750.316(1)(b).

Armed robbery is a form of larceny. See *People v Henry*, 315 Mich App 130, 136-37; 889 NW2d 1 (2016). The elements of armed robbery, MCL 750.529,[4] are:

> (1) the defendant, in the course of committing a larceny of any money or other property that may be the subject of a larceny, used force or violence against any person who was present or assaulted or put the person in fear, and (2) the defendant, in the course of committing the larceny, either possessed a dangerous weapon, possessed an article used or fashioned in a manner to lead any person present to reasonably believe that the article was a dangerous weapon, or represented orally or otherwise that he or she was in possession of a dangerous weapon. [*Henry*, 315 Mich App at 136-137 (quotation marks and citations omitted).]

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[3] *People v Walker*, 374 Mich 331; 132 NW2d 87 (1965).

[4] MCL 750.629 provides:

> A person who engages in conduct proscribed under section 530 and who in the course of engaging in that conduct, possesses a dangerous weapon or an article used or fashioned in a manner to lead any person present to reasonably believe the article is a dangerous weapon, or who represents orally or otherwise that he or she is in possession of a dangerous weapon, is guilty of a felony punishable by imprisonment for life or for any term of years. If an aggravated assault or serious injury is inflicted by any person while violating this section, the person shall be sentenced to a minimum term of imprisonment of not less than 2 years.

In this case, even excluding defendant's prior statements to detectives and the prosecution's other-acts evidence, a rational fact-finder could have concluded that the prosecution met its burden to prove that defendant committed felony murder and armed robbery in connection with the victim's death. See *Wolfe*, 440 Mich at 515. We have previously set forth with specificity the evidence that was entered at trial against defendant, and viewing that evidence in the light most favorable to the prosecution, the jury could have reasonably concluded that defendant was in the victim's apartment on the night in question, and by extension, that he committed felony-murder and armed robbery.

Lastly, defendant argues that the trial court arbitrarily imposed excessive and manifestly unjust court costs. We review this unpreserved issue for plain error affecting substantial rights. *Carines*, 460 Mich at 763.

MCL 769.1k(1)(b)(*iii*) empowers "trial courts to impose state costs against a criminal defendant if reasonably related to the actual costs incurred by the trial court." *People v Stevens*, 318 Mich App 115, 121; 896 NW2d 815 (2016) (quotation marks and citation omitted). The trial court "must establish a factual basis from which this Court can determine whether the costs imposed were reasonably related to the actual costs incurred by the trial court." *Id*. (quotation marks and citation omitted).

In this case, the trial court imposed costs reasonably related to its actual costs and established the factual basis for those costs. See *id*. The trial court stated on the record the imposed costs, provided defendant with an explanation of the costs on the podium, and explained that it would attach an explanation of the costs to the judgment of sentence (which it did). Additionally, this Court has already upheld the Washtenaw Circuit Court's imposition of $1611—the exact amount imposed in this case by the same court—in a prior case. See *People v Cameron*, 319 Mich App 215, 219, 236; 900 NW2d 658 (2017). Therefore, the trial court did not plainly err when it imposed $1611 in court costs.

Affirmed.

/s/ Mark T. Boonstra
/s/ Stephen L. Borrello