

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
February 21, 2013

V

ROBIN WALKER,

No. 310165
Manistee Circuit Court
LC No. 11-004107-FH

Defendant-Appellant.

Before: K. F. KELLY, P.J., and MARKEY and FORT HOOD, JJ.

MEMORANDUM.

Defendant was convicted, following a bench trial, of prisoner in possession of a weapon, MCL 800.283(4). He was sentenced to 20 to 60 months' imprisonment. Defendant appeals by right, and we affirm.

Defendant's conviction arises from the random search of his prison cell while he took a shower. A corrections officer testified that he observed a small paper tube made from plain white paper on defendant's writing surface in his segregation cell. When the officer picked up the tube, a sharpened piece of steel fell out. The piece of galvanized steel was straightened and sharpened and appeared to be a broken off piece of fencing from the back of the segregation unit. The prosecutor filed a notice of intent to admit similar acts evidence pursuant to MRE 404(b), citing two prior instances where pieces of metal fencing were found in defendant's pocket and in a cell he shared with another inmate. Defendant did not file a written response opposing the prosecutor's notice and did not object to the admission of similar acts evidence at trial.

Although corrections officers testified regarding the pieces of fencing that were found on or near defendant before the offense at issue, the trial judge, acting as the trier of fact, concluded that the evidence was probative, but was unnecessary to convict. Rather, the trial court found the testimony of the corrections officer that conducted the random sweep coupled with the chain of custody testimony was sufficient proof to support the conviction.

On appeal, defendant contends that the admission of irrelevant and prejudicial prior instances of possession of a wire deprived him of due process of law and could not meet the

four-prong test for admission of other acts evidence.¹ We disagree. The decision whether to admit evidence is within the trial court’s discretion, and the trial court’s decision will only be reversed when there is an abuse of discretion. *People v Gursky*, 486 Mich 596, 606; 786 NW2d 579 (2010). An abuse of discretion occurs when the trial court selects an outcome that falls outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). When the decision to admit evidence involves a preliminary question of law, such as whether a rule of evidence precludes admission, appellate review is de novo. *Gursky*, 486 Mich at 606. “To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal.” *People v Aldrich*, 246 Mich App 101, 113; 631 NW2d 67 (2001). Unpreserved challenges to the admission of evidence are reviewed for plain error that affected a defendant’s substantial rights. *People v Douglas*, 296 Mich App 186, 191; 817 NW2d 640 (2012). When examining unpreserved evidentiary error, reversal is required only when “the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings.” *Id.* at 191-192.

In a bench trial, the trial court is presumed to know the applicable law and the difference between admissible and inadmissible evidence. *People v Lanzo Constr Co*, 272 Mich App 470, 484-485; 726 NW2d 746 (2006). The trial court’s knowledge of the law allows it to ignore errors committed at trial and to decide a case solely upon the evidence properly admitted at trial. *People v Taylor*, 245 Mich App 293, 305; 628 NW2d 55 (2001). Absent clear evidence that the trial court relied on an incorrect proposition of law, the presumption that the court knew the law prevails. *People v Knapp*, 244 Mich App 361, 389; 624 NW2d 227 (2001).

In the present case, the trial court expressly stated that it was not convicting on the basis of MRE 404(b) evidence. Rather, the court noted that the evidence, although probative, was unnecessary because the testimony of the corrections officer who conducted the sweep and the chain evidence was sufficient to convict. Moreover from the record, it appears that defense trial counsel purposely did not object to the admission of the MRE 404(b) evidence as a matter of trial strategy. See *People v Horn*, 279 Mich App 31, 39; 755 NW2d 212 (2008). Specifically, defense counsel noted that it was nonsensical that defendant would purportedly possess pieces of wire on two prior occasions and then blatantly leave the wire on his writing desk when placed in administrative segregation. Because the admission of the 404(b) evidence was a matter of trial strategy, *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007), and the trial court did

¹ Defendant does not challenge the elements of the offense on appeal, and therefore, we do not address them.

not rely on the evidence to convict, this claim of error does not entitle defendant to appellate relief.

Affirmed.

/s/ Kirsten Frank Kelly

/s/ Jane E. Markey

/s/ Karen M. Fort Hood