

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION	
	)	(Not For Official Publication)	
Plaintiff and Appellee,	)	Case No. 20060546-CA	
	)		
v.	)	F I L E D	
	)	(March 20, 2008)	
Eric Pectol,	)		
	)		
Defendant and Appellant.	)	<table border="1"><tr><td>2008 UT App 94</td></tr></table>	2008 UT App 94
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Second District, Ogden Department, 041905244  
The Honorable Parley R. Baldwin

Attorneys: Randall W. Richards, Ogden, for Appellant  
Mark L. Shurtleff and Ryan D. Tenney, Salt Lake City,  
for Appellee

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Before Judges Thorne, Davis, and Orme.

ORME, Judge:

Rule 404 prohibits the admission of evidence of "other crimes, wrongs or acts . . . to prove the character of a person in order to show action in conformity therewith." Utah R. Evid. 404(b). Such evidence, however, is admissible "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Id. None of the evidence admitted by the trial court was used to prove that Defendant acted in conformity with a bad character. That Defendant was involved in drugs, that he had loaned money to Stacey Wilbert to purchase methamphetamine, that she had not paid back her debt in full, that Defendant had effectively stolen the Wilberts' Chevy Blazer in payment of the debt, and that the Wilberts had thereafter taken the vehicle back all suggest a motive for Defendant to shoot at the Wilberts when they gave chase. And testimony that Defendant admitted firing a .380-caliber handgun in his apartment later that evening was relevant, non-character evidence bearing on the crime charged, namely, that Defendant possessed a .380-caliber handgun, that the handgun was capable of being fired, that he was experienced in firing it, and that he had fired it that same day. See State v. Shaffer, 725 P.2d 1301, 1307 (Utah 1986) ("While evidence of other bad acts is inadmissible to show the general disposition of the defendant, such evidence, when relevant and competent, is

admissible to prove a material fact."). Thus, we conclude that the challenged evidence was readily admissible under rule 404(b).

Of course, rule 403 gives the trial court discretion to exclude otherwise admissible evidence "if its probative value is substantially outweighed by the danger of unfair prejudice." Utah R. Evid. 403. Before trial, the State filed a motion seeking permission to present evidence related to a separate attempted murder count against Defendant. The trial court precluded the State from presenting evidence that Defendant shot and injured someone at his apartment the same day he shot at the victims in this case, but the court did allow testimony that Defendant admitted possessing and firing a .380-caliber handgun at his apartment that same day, provided that no victim was mentioned.<sup>1</sup> The court also allowed the State to present evidence of Defendant's involvement with drugs and his relationship with Stacey Wilbert. The trial court was mindful that evidence of an attempted murder might engender unfair prejudice against Defendant, and it very carefully limited what the State was permitted to present in order to avoid the risk of such prejudice. We see no abuse in the trial court's exercise of its discretion under rule 403. See Shaffer, 725 P.2d at 1309.

Affirmed.

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Gregory K. Orme, Judge

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WE CONCUR:

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William A. Thorne Jr.,  
Associate Presiding Judge

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James Z. Davis, Judge

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1. Insofar as Defendant claims that the admission of this evidence also violates rule 609, he is mistaken. See Utah R. Evid. 609. In the absence of a conviction, the rule is inapplicable. See State v. Duncan, 812 P.2d 60, 64 (Utah Ct. App.), cert. denied, 826 P.2d 651 (Utah 1991).