STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED November 28, 2017
v	No. 334159 Washtenaw Circuit Court
SADE LATOYA-MARIE SALTERS, also known as SADE LATOYA SALTERS, also known as SADE MARIE SALTERS, Defendant-Appellant.	LC No. 16-000014-FH

Before: M. J. KELLY, P.J., and RONAYNE KRAUSE and BOONSTRA, JJ.

PER CURIAM.

Defendant appeals by right her convictions, following a jury trial, of one count of third-degree fleeing and eluding a police officer, MCL 257.602a(3), and one count of reckless driving, MCL 257.626(1). The trial court sentenced defendant to concurrent terms of 39 days' imprisonment for her fleeing and eluding and reckless driving convictions. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

On February 10, 2015, Jasmine Brize borrowed her grandfather's car, a 2000 Hyundai Tiburon, to visit defendant and some friends at 727 Moss Street in Ypsilanti. At some point during the visit, Brize laid down to take a nap. Brize testified that when she woke up, she discovered that her grandfather's car was gone. Brize also testified that at some point defendant called her and told her that she had taken the car to Walmart and had failed to pull over for police. Brize identified defendant as the person who had taken the car.

Deputy Sheriff Derek Wiese of the Washtenaw County Sheriff's Office testified that he spotted a dark-blue Tiburon stopped at an intersection without a working rear driver's side tail light. Deputy Wiese testified that he watched the Tiburon pull out from behind other stopped vehicles and run a red light. When Deputy Wiese attempted to initiate a traffic stop, the driver of the Tiburon refused to pull over. Several police vehicles, led by Sergeant David Egeler, pursued the Tiburon until the chase was terminated for safety reasons. Michigan State Police Trooper Ryan Kilpatrick testified that a law enforcement database search for the Tiburon's license plate number led him to Brize's grandfather, and eventually led to defendant's arrest. Weise, Egeler, and Kilpatrick all identified defendant as the driver of the Tiburon.

Defendant's theory of the case was that Brize had identified her as the driver of the Tiburon in order to protect the actual driver, Demetrius Alexander. On the morning of the first day of trial, defendant's counsel requested that he be allowed to call LaShonda Owens as a witness:

> I want to call a person named LaShonda (ph sp) Owens. LaShonda lived at . . . 729 Moss [Street].
>
> One of the witnesses that the prosecutor's going to present lived at 727 Moss. LaShonda (ph sp) Owens will say that this man, Demetrius (ph sp) Alexander, also lived at 727 Moss. And LaShonda Owens will say that—And that's—And—that [defendant] spent a lot of time in Ms. Owens' home and that Ms. Owens—and—I'm sorry—that [defendant's] identification—I mean, the address and the information, for example, is at Ms. Owens' residence. And I want to use this testimony to show that the evidence that the prosecutor is offering from the witness, Jasmine Brize, is being offered—you know, framing [defendant] to protect Mr. Alexander. Nobody identified [defendant] or even a woman as the driver of the car until after Ms. Brize gave the officers the name of [defendant].

The prosecution objected to defendant's request to call Owens as a witness, contending that it had no previous knowledge of the witness and had not had time to investigate the witness or her likely testimony. The trial court denied defendant's request.

During the trial, the prosecution cross-examined defendant regarding when she had stopped residing at 729 Moss Street. In response, defendant explained that she had moved in May 2015 before she went to jail. The prosecutor then asked defendant whether she had gone to jail because of outstanding warrants for disorderly conduct and retail fraud. When defense counsel objected on relevance grounds, the prosecutor argued that the existence of the outstanding warrants provided a motive for defendant to flee from the police. Defendant testified, however, that she was not aware of any outstanding warrants until May 31, 2015, after her arrest in this case. She also testified that the retail fraud case had been dismissed, and that she had paid a bond on a disorderly conduct ticket, leading her to believe that the matter was resolved:

> DEFENDANT: I had paid a bond and [indiscernible] supposed to have gone to court on it; but I thought it was a minor ticket. I was—It was my first ticket I ever got a day in my life. So I really thought when I paid the bond I didn't have to come back and see a judge. So I didn't know that I had a warrant, 'cause if I did, I would of [sic] went down to 36th District Court and took [sic] care of it with another hundred bucks and let the judge know what happened.

Defendant was convicted and sentenced as stated. This appeal followed.

II. LATE-ENDORSED WITNESS

Defendant argues that the trial court abused its discretion by denying her request to add a late-endorsed witness. We disagree. We review for an abuse of discretion a trial court's decision whether to permit the late endorsement of a witness. *People v Yost*, 278 Mich App 341,

379; 749 NW2d 753 (2008). A trial court abuses its discretion when its decision falls outside the range of principled outcomes. *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

A defendant has a constitutional right to present a defense, which includes the right to call witnesses on his or her own behalf. *Yost*, 278 Mich App at 379. However, "this right is not absolute: the accused must still comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence." *Id*. (quotation marks and citation omitted). When a defendant seeks the late endorsement of a witness, a trial court must "weigh[] the competing interests involved" before selecting a remedy for the violation. *People v Merritt*, 396 Mich 67, 82; 238 NW2d 31 (1979). The trial court should "inquir[e] into all the relevant circumstances, including the causes and bona fides of tardy, or total, noncompliance, and a showing by the objecting party of actual prejudice." *People v Davie (After Remand)*, 225 Mich App 592, 598; 571 NW2d 229 (1997) (quotation marks and citation omitted).

The trial court's decision to deny defendant's request to call Owens as a witness was within the range of principled outcomes. The trial court explored the nature of the potential testimony and considered the reasons for noncompliance and the prejudice to the prosecution before denying defendant's request, noting that the prosecution had not had an opportunity to investigate the witness and that the potential witness had not been disclosed before trial. Further, even if Owens had testified, it is unlikely that the testimony would have swayed the jury in light of the identification of defendant as the driver of the Tiburon by Brize and the three police officers involved in the chase. Therefore, even if the trial court erred by denying defendant's request to present Owens's testimony, the error was harmless. See *People v Mateo*, 453 Mich 203, 215; 551 NW2d 891 (1996).

III. DEFENDANT'S TESTIMONY REGARDING OUTSTANDING ARREST WARRANTS

Defendant also argues that the trial court erred by allowing the prosecution to cross-examine her regarding other crimes. We disagree. "A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion." *People v Burns*, 494 Mich 104, 110; 832 NW2d 738 (2013).

MRE 402 provides that "[a]ll relevant evidence is admissible, except as otherwise provided . . . ." Evidence is relevant if it has a tendency "to make the existence of any factual consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. Relevant evidence is evidence that is materially related to a fact of consequence to the action and that has probative force. *People v Mills*, 450 Mich 61, 66-68; 537 NW2d 909 (1995). A material fact "need not be an element of a crime or cause of action or defense but it must at least be 'in issue' in the sense that it is within the range of litigated matters in controversy." *Id*. (quotation marks and citation omitted). "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . ." MRE 403.

In this case, the prosecution's cross-examination questions sought to explore defendant's unprompted statement that she had gone to jail in May 2015. The prosecution's questions sought to establish that defendant knew about arrest warrant(s) when she encountered police in

February, thus giving her a motive at that time to flee from the officers. The prosecution's questions were relevant to its theory of the case. MRE 401. And the danger of unfair prejudice resulting from this testimony was slight; defendant testified that she was not aware of any outstanding warrants at the time of the events at issue in this case. When asked to elaborate further on the issue of outstanding warrants, she testified that she was confused about what she called "a minor ticket" that may have resulted in an arrest warrant; she also testified that the retail fraud case was ultimately dismissed. It is unlikely that this testimony was given undue weight by the jury. MRE 403; *People v Danto*, 294 Mich App, 67-68; 537 NW2d 909 (1995).

Further, even if defendant's testimony was admitted in error, any error was harmless in light of the overwhelming evidence presented at trial. See *People v Swint*, 225 Mich App 353, 379; 572 NW2d 666 (1997). Again, Brize and the three police officers involved in the chase positively identified defendant as the driver of the Tiburon.

Affirmed.

/s/ Michael J. Kelly
/s/ Mark T. Boonstra

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RONAYNE KRAUSE, J. (*concurring*).

I agree with my colleagues on all but one issue in this case. Specifically, I agree with all aspects of the majority opinion other than their finding that the prosecutor's cross examination of defendant regarding warrants that may have been out for her arrest was not error. I do however believe that it was harmless error.

As the majority has stated, "A trial court's decision to admit or exclude evidence is reviewed for an abuse of discretion." *People v Burns*, 494 Mich 104, 110; 832 NW2d 738 (2013). An abuse of discretion occurs when the trial court chooses an outcome that is outside the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

MRE 402 provides that "[a]ll relevant evidence is admissible, except as otherwise provided . . . " Evidence is relevant if it has a tendency "to make the existence of any factual consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. Relevant evidence is evidence that is materially related to a fact of consequence to the action and that has probative force. *People v Mills*, 450 Mich 61, 66-68; 537 NW2d 909 (1995). A material fact "need not be an element of a crime or cause of action or defense but it must at least be 'in issue' in the sense that it is within the range of litigated matters in controversy." *Id*. (quotation marks and citation omitted). "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice . . . " MRE 403.

The admission of other acts evidence is limited by MRE 404(b) to avoid the danger of conviction based on a defendant's history of other misconduct rather than on the evidence of his

conduct in the case in issue. *People v Starr*, 457 Mich 490, 495; 577 NW2d 673 (1998). MRE 404(b)(1) provides as follows:

> Evidence of other crimes, wrongs, or action 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 crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

Evidence of other crimes or acts is admissible under MRE 404(b) if such evidence: (1) is offered for a proper purpose and not to prove the defendant's character or propensity to commit the crime; (2) is relevant to an issue or fact of consequence 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, 74-75; 508 NW2d 114 (1993), amended on other grounds 445 Mich 1205 (1994). Although evidence of motive in a prosecution is always relevant, *People v Pinkney*, 316 Mich App 450, 468; 891 NW2d 891 (2016), for evidence to be properly admitted as motive evidence, it must be validly connected to the charged crimes, see *People v Williams*, 134 Mich App 639, 641; 351 NW2d 878 (1984).

During trial, defendant testified that she was unaware that there was a case against her concerning the charged incident until May 31, 2015. She stated that she found out about the investigation after the arrest warrant was issued. During cross examination, the prosecution sought to determine when defendant stopped residing at 729 Moss. In response, defendant explained that she moved in May 2015 before she went to jail. The prosecutor then asked defendant whether she went to jail because of outstanding warrants for disorderly conduct and retail fraud. The prosecutor argued that the outstanding warrants gave defendant a motive to flee from the police.

In the instant case, although defendant may have possibly opened the door a bit by testifying that she went to jail, the admission of extrinsic evidence that she had outstanding warrants for disorderly conduct and retail fraud was in error. In essence it was slamming the door wide open and this was error. Defendant denied seeing Brize on the day of the incident and also denied that she was the driver of the vehicle. Because defendant denied having any knowledge of her outstanding warrants at the time of the offense, they could not have been her motive to flee the police.

However, any error was harmless in light of the overwhelming evidence presented at trial. See *People v Swint*, 225 Mich App 353, 379; 572 NW2d 666 (1997). A defendant's

> right to fair trial by jury required that preserved error be reviewed in terms of its effect on the factfinder. Thus, reversal is only required if the error was prejudicial. That inquiry focuses on the nature of the error and assesses its effect in light of the weight and strength of the untainted evidence. *Id*. (citations and quotation marks omitted).

Here, Brize testified that defendant informed her that she had gone to Walmart with the Tiburon and that she did not stop when police attempted to pull her over. Brize testified that defendant was wearing a white hat and a red sweat suit. Various officers testified about the efforts to stop the Tiburon. Deputy Wiese testified that he tried to initiate a traffic stop when the Tiburon ran a red light but the driver refused to stop. After several miles of chasing the Tiburon, Deputy Wiese pulled up alongside the vehicle around the well-lit Metro Airport area and was able to get a good look at defendant for approximately 20 seconds. He stated that the driver was wearing a red-and-white-striped hat and a red jacket with a white stripe on the jacket. Deputy Wiese also testified that after he terminated the chase, he pulled up defendant's picture on his computer and was 100 percent sure that she was the driver of the Tiburon. Trooper Ryan Kirkpatrick testified that he pulled alongside the Tiburon during the chase and looked over at defendant. He stated that when he pulled up defendant's picture on his computer, he was able to identify her as the driver of the vehicle. Sergeant David Egeler also testified that when he pulled up alongside the Tiburon on I-94, he was able to get a look at the driver of the Tiburon and identified defendant as the driver of the vehicle.

Reviewing the evidence as a whole, I conclude that any actual prejudicial effect of the error was minimal in light of the overwhelming evidence against defendant.

I therefore concur in the result of the majority's opinion, but do find error.

/s/ Amy Ronayne Krause