

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

UNPUBLISHED  
January 15, 2013

v

THOMAS WETZEL SAUNDERS,  
  
Defendant-Appellant.

No. 307108  
Wayne Circuit Court  
LC No. 11-004534-FC

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Before: TALBOT, P.J., and WILDER and STEPHENS, JJ.

PER CURIAM.

Defendant appeals as of right his jury-trial convictions of first-degree criminal sexual conduct (CSC-I), MCL 750.520b (multiple variables) (sexual penetration during the commission of a felony or through force or coercion and the victim sustained injury), kidnapping, MCL 750.349, and assault with intent to do great bodily harm less than murder, MCL 750.84. Defendant was sentenced to 23 to 50 years' imprisonment for the CSC-I conviction, 15 to 50 years' for kidnapping, and 6 to 10 years' for assault with intent to do great bodily harm less than murder. For the reasons set forth in this opinion, we affirm.

This case arises from an incident that occurred in January 2010 in the City of Detroit. Complainant in this case alleged that she met defendant outside of a store on Collingwood Street in Detroit. During this encounter, complainant testified that defendant offered to assist her in the purchase of some "loose cigarettes" from the store. After purchasing the "loose cigarettes" for complainant, she and defendant agreed to go get some crack cocaine to smoke. Complainant agreed to have sex with defendant in exchange for defendant providing the crack cocaine.

After the two obtained some crack cocaine, they went to an abandoned home on Tuxedo Street. The windows and doors of the home were all boarded up and complainant waited for defendant to climb through a window and let her into the home. Once inside, complainant testified that she and defendant smoked crack cocaine. Defendant then told complainant to take her clothes off and she complied. Defendant then attempted to have sex with complainant; however complainant testified that she could not have sex because she felt like she had to go to the bathroom "every time" defendant penetrated her. Complainant further testified that when she went to the bathroom, defendant hit her on the head with a hammer.

Complainant testified that defendant continued to punch her when she would not have sex with him, threatened to make her perform oral sex on his dogs, and penetrated her vagina

with the handle of a hammer. When defendant went into another room, complainant grabbed a knife and sliced defendant's chest. As defendant grabbed the knife from complainant, he cut his hand. After the passage of significant time, defendant told complainant to get dressed because he had to go to the hospital for stitches.

After departing the abandoned home, complainant's sister took her to a hospital. While there, she saw defendant checking into the same hospital. Complainant alerted hospital security who called the police. Police officers took a statement at the hospital and the Detroit Police Department's Sex Crimes Unit was called in to investigate.<sup>1</sup> After complainant identified defendant in a photo array, police arrested defendant.

Before trial, the prosecution gave pretrial notice of its intent to introduce other-acts testimony from three women who claimed that defendant "accosted and raped" them after having agreed to exchange crack cocaine for sex. Specifically, the women proposed to testify that defendant lured them to an abandoned home on Tuxedo Street with promises to exchange crack cocaine for sex. Once at the home, defendant "beat them, raped them and held them for several days captive against their will." The prosecutor argued that the other-acts evidence showed a "similar pattern of behavior, a modus operandi" and, "[i]t goes to the issue of consent and that all of those questions are at issue before the Court." The trial court admitted the other-acts evidence over defendant's objection on grounds that the evidence "certainly is indicative of a way of doing things and action[s] that are common there that would definitely test credibility." The trial court stated that the evidence "doesn't have to be spot on exactly the same evidence that indicates a certain modus operandi that has to be shown to be so similar."

The other-acts witnesses testified at trial. JM testified that on September 24, 2009, she came in contact with defendant as she left a store on her way home. Defendant pulled up to her in a cab and asked her if she "wanted to go hang out with him and party at his new place." They then went to an abandoned house located at the intersection of Tuxedo and Linwood. However, as soon as the two of them walked into the house defendant boarded the door, hit JM and said, "B\*\*\*, take your clothes off." According to JM, defendant forced her to have sex, hit her in the head with a crowbar and penetrated her vagina with it. Defendant would not allow her to leave the home for two days. JM testified that defendant threatened to force her to perform oral sex on his dogs.

TJ also testified on behalf of the prosecution that she had a sexual relationship with defendant where they exchanged cash for sex. TJ testified that on September 9, 2010, defendant left a note on her door telling her to come by his house because he owed her money for drugs. When TJ went to defendant's house, they smoked crack and had sex. Defendant paid TJ, and as she was leaving, defendant got upset and slammed her into a wall. Defendant then grabbed a crowbar and began hitting her in the head. TJ testified that defendant repeatedly forced her to

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<sup>1</sup> Complainant's statements to police differed from her trial testimony. Complainant testified at trial that she lied to police and hospital staff when she told them she had been physically abducted from the street. She also testified that she failed to initially tell police that she smoked crack cocaine with defendant.

have sex with him and refused to allow her to leave the home. Defendant also threatened to force TJ to perform oral sex on his dogs. Three days later, TJ was able to escape defendant's house by jumping through a window and reported the incident to the police while she was in the hospital.

Defendant was convicted and sentenced as set forth above and this appeal ensued.

On appeal, defendant argues that the trial court erred in admitting evidence of defendant's alleged prior bad acts under MRE 404(b). Defendant contends that since the issue of defendant's identity was virtually uncontested, there was "no need" for the prosecution to introduce evidence of defendant's prior bad acts. Additionally, defendant argues that the trial court erred by not employing the proper legal tests to allow introduction of prior bad acts testimony when proving identity. Thus, defendant argues that the use of prior bad acts testimony "violated defendant's right to a fair trial as guaranteed by the due process clauses in the Michigan Constitution and the Fourteenth Amendment."

We review a trial court's evidentiary ruling for an abuse of discretion. *People v Benton*, 294 Mich App 191, 195; 817 NW2d 599 (2011). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). Preliminary issues of law, including the interpretation of the rules of evidence and the effect of constitutional provisions, are reviewed de novo. *Benton*, 294 Mich App at 195.

MRE 404(b)(1) governs the admission of other-acts evidence and provides as follows:

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.

In general, admission of other-acts evidence under MRE 404(b) is governed by the test set forth in *People v VanderVliet*, 444 Mich 52, 74-76; 508 NW2d 114 (1993) as follows:

[First], the evidence must be relevant to an issue other than propensity under Rule 404(b) . . . Second, the evidence must be relevant . . . to an issue or fact of consequence at trial . . . Third, the trial judge should employ a balancing process under [MRE 403] . . . Finally, the trial court, upon request, may provide a limiting instruction. . . . [Internal citations omitted.]

However, the test set forth in *People v Golochowicz*, 413 Mich 298; 319 NW2d 518 (1982), governs when other-acts evidence is offered to prove identity through modus operandi. *People v Ho*, 231 Mich App 178, 186; 585 NW2d 357 (1998). That test provides the following requirements:

(1) there must be substantial evidence that the defendant actually perpetrated the bad act sought to be introduced; (2) there must be some special quality or circumstance of the bad act tending to prove the defendant's identity . . . (3) one or more of these factors must be material to the determination of the defendant's guilt of the charged offense; and (4) the probative value of the evidence sought to be introduced must not be substantially outweighed by the danger of unfair prejudice. [*Golochowicz*, 413 Mich at 309 (footnotes omitted).]

Thus, the *Golochowicz* test “identifies the requirements of logical relevance when the proponent is utilizing a *modus operandi* theory to prove identity.” *VanderVliet*, 444 Mich at 66 (emphasis in original, footnote omitted). In *Golochowicz*, our Supreme Court stated:

It is the distinguishing characteristics which constitute the acts as similar within the meaning of MCL 768.27 and MRE 404(b), not the fact that all constitute the same crime or are violative of the same statute. The distinguishing, peculiar or special characteristics which are common to the acts and thus personalize them are said to be the defendant's ‘signature’ which identifies him as the perpetrator. [*Golochowicz*, 413 Mich at 312 (quotation omitted).]

Having set forth the jurisprudence of when prior bad acts evidence can be used to identify the defendant as the perpetrator, we turn to defendant's argument that because the evidence of defendant's identity was strong or essentially uncontroverted, the evidence was unnecessary. First, we note that defendant concedes, as he must, that identity is always an essential element of a crime. *People v Oliphant*, 399 Mich 472, 489; 250 NW2d 443 (1976). Furthermore, defendant's plea of not guilty to the charges “puts the prosecution to its proofs regarding all elements of the crime charged.” *VanderVliet*, 444 Mich at 78. Identity was an element of all the charges. Thus, contrary to defendant's assertion that identity was irrelevant because he essentially “conceded” he committed, at the very least, a sexual act with the complainant, the prosecutor was still required to prove defendant was the perpetrator of the charged offenses beyond a reasonable doubt. Inherent in such requirement was that the prosecution prove that defendant, and not someone else, committed the acts at issue. Therefore the identity of defendant was at issue and was relevant. Accordingly, defendant's conclusory argument that there simply was “no need” for the prior bad acts evidence is devoid of legal merit.

Turning to defendant's additional argument that the prior bad acts testimony failed to meet the dictates of the *Golochowicz* test, we note that defendant is correct in his assertion that when prior bad acts evidence is offered to prove identity, the prosecution should insist upon a showing of a high degree of similarity in the manner in which the crime in issue and the other crimes were committed. *Golochowicz*, 413 Mich at 325. Here, that high degree of similarity was met. Witnesses testified that defendant offered them crack, took them to an abandon home located near Tuxedo Street, physically beat them with objects, threatened to force them to perform oral sex on his dogs, raped them, and held them hostage against their will. In addition, defendant inserted objects into the vaginas of complainant and a prior bad acts witness. Thus, the prosecution demonstrated a high degree of similarity in the manner in which the three crimes were committed.

Moreover, the prior-acts evidence was admissible to show that defendant acted according to a common plan or scheme, which in turn, was relevant to the credibility of the complainant. MRE 404(b); *People v Hine*, 467 Mich 242, 251; 650 NW2d 659 (2002). In *Hine*, our Supreme Court explained that other-acts evidence is admissible to show common plan or scheme as follows:

evidence of similar misconduct is 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. For other acts evidence to be admissible there must be such a concurrence of common features that the uncharged and charged acts are naturally explained as individual manifestations of a general plan.

In this case, the other-acts evidence was logically relevant to show that defendant engaged in a common plan or scheme. Specifically, the other-acts evidence showed that defendant effectuated a common plan where defendant lured prostitutes to his abandoned home with promises of crack cocaine in exchange for sex. Once at the home, defendant physically beat the women with metal objects, threatened the women, forced the women to engage in sexual intercourse with him, threatened to force the women to perform sexual acts with his animals, sexually penetrated the women with objects, raped the women, and held them hostage against their will. The similarities between the uncharged conduct and the charged offenses were strikingly similar such that there was “such a concurrence of common features that the uncharged and charged acts are naturally explained as individual manifestations of a general plan.” *Id.* The evidence therefore was relevant to an issue other than propensity—i.e. it tended to support the complainant’s testimony that defendant held her against her will and physically and sexually assaulted her. As such, the trial court did not abuse its discretion in admitting the evidence under MRE 404(b).

Defendant also contends that the trial court erred in failing to properly conduct a balancing test to determine whether the danger of unfair prejudice substantially outweighed the probative value of the other-acts evidence. At the motion hearing, the trial court articulated that the probative value of the evidence outweighed any prejudicial effect because the evidence was probative of witness credibility. Thus, the court gave a legally sufficient explanation on why the evidence was more probative than prejudicial. Moreover, the court did not abuse its discretion in doing so.

Evidence is unfairly prejudicial under MRE 403 “when there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury.” *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998). In this case, the other-acts evidence was not only “marginally probative.” Instead, the evidence was highly relevant in that it tended to bolster the complainant’s credibility, which in turn was critical to the ultimate issue in the case—i.e. whether defendant was guilty of the charged offenses beyond a reasonable doubt. Furthermore, there was no danger that the jury gave undue or preemptive weight to the other-acts evidence where the trial court instructed the jury not to consider the evidence for propensity purposes. See *Unger*, 278 Mich App at 235 (jurors are presumed to follow their instructions). On this record, we find that the trial court did not abuse its discretion in ruling that the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice.

In sum, we find that the trial court did not abuse its discretion in admitting the other-acts evidence under MRE 404(b). The trial court properly determined that the evidence was offered for a proper purpose, and the court properly weighed the probative value of the evidence against the potential for undue prejudice under MRE 403(b). Finally, the court provided a limiting instruction directing the jury not to consider the evidence for propensity purposes. As such, defendant has failed to show that the trial court committed an evidentiary error that denied him his right to a fair trial.

Affirmed.

/s/ Michael J. Talbot

/s/ Kurtis T. Wilder

/s/ Cynthia Diane Stephens