

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM LYLES, JR.,

Defendant-Appellant.

UNPUBLISHED

July 22, 2014

No. 315323

Wayne Circuit Court

LC No. 12-008021-FC

Before: BECKERING, P.J., and HOEKSTRA and GLEICHER, JJ.

PER CURIAM.

Following a jury trial, defendant appeals as of right his conviction of first-degree murder, MCL 750.316. The trial court sentenced defendant to life imprisonment without parole. Because the trial court failed to give a requested jury instruction on the importance and effect of character evidence, thereby denying defendant the benefit of his character evidence, we reverse and remand for a new trial.

Defendant's conviction arose from the stabbing death of the victim in December of 1983. At the time of his death, the victim lived with a relative, Louise Kountz,¹ and her daughters. Defendant had been in a long term dating relationship with Kountz, which was, according to numerous witnesses, violent and abusive. Before the victim's death, defendant had moved out of the home, and defendant had communicated to one of Kountz's daughters that he blamed the victim for "all their problems." He had also been overheard to say that he was "going to get" the victim. Thereafter, the victim was stabbed in the house one night when others in the home were asleep.

The perpetrator broke a window in the basement to gain entry, placed the family dog in the freezer, presumably to prevent the dog from sounding an alarm, and cut the electricity to the home. Although no one saw defendant enter the home that evening, something awakened the family and the victim's death was discovered. Kountz's daughters saw a shadowy figure consistent with defendant's size and shape exit the home, and one daughter in particular smelled a distinctive stale cigarette odor she associated with defendant. The girls ran to a neighbor's

¹ Kountz passed away before defendant's trial.

home and told their neighbor that defendant had killed the victim. Defendant's shoes, with sponge taped on the bottom, were recovered in the home.² In 1984, police obtained a warrant for defendant's arrest, but defendant was not apprehended. He ceased contact with Kountz's family and, sometime after the victim's death, defendant left the state of Michigan. Police located defendant in 2012 and, after his identification by one of Kountz's daughters, he was charged with murder. Following a jury trial, defendant was convicted of first-degree murder.

On appeal, defendant raises claims of prosecutorial misconduct and several allegations of error relating to the trial court's instructions to the jury. Because we find it dispositive, we first address defendant's jury instruction claim relating to his proffered character evidence. Specifically, defendant asserts that the trial court failed to instruct the jury on the use of his good character evidence as provided in M Crim JI 5.8a(1).

Relevant to defendant's claim, at trial, the trial court read an initial set of instructions to the jury. Afterward, out of the presence of the jury, defense counsel informed the trial court that "some instructions were not read."³ Among other omitted instructions, defense counsel indicated that M Crim JI 5.8a⁴ had not been included in the court's instructions. Thereafter, the trial court provided the jury with several additional instructions. Apparently in an attempt to respond to defendant's request for M Crim JI 5.8a, the trial court instructed the jury as follows:

[Y]ou've heard the testimony of --- about witness' truthfulness. You may consider this evidence together with all other evidence in the case in deciding whether you believe the testimony of the witness, inn [sic] deciding how much weight to give to that witness. The prosecutor has examined some of defendant's character witnesses as to whether or not they heard anything bad about the defendant. You should consider such cross-examination only in deciding whether or not you believe the character witness and whether they described the [defendant] fairly.

The prosecutor also has called witnesses who have testified that the defendant did not have good character of the other acts.^[5]

² The prosecutor theorized at trial that the sponge had been used to quiet defendant's movements through the home.

³ At that time, the prosecution also noted the omission of a jury instruction.

⁴ The trial transcript refers to M Crim JI 5.88, but in context it is clear that defense counsel and the trial court were considering M Crim JI 5.8a. Defense counsel in particular explained that the instruction at issue related to "Character Evidence Regarding the Conduct of the Defendant."

⁵ At trial, and on appeal, defendant challenges the trial court's statement that "[t]he prosecutor also has called witnesses who have testified that the defendant did not have good character of the other acts." Defendant asserts that this instruction relates to rebuttal character witnesses pursuant to M Crim JI 5.8a(3) which was inappropriate because the prosecution failed to call rebuttal character witnesses. The instruction given in this regard was poorly worded and somewhat

When the trial court finished providing this and other additional instructions, defense counsel again objected, stating that there were “a couple of instructions that were not read exactly as how they appear in the Criminal Jury Instructions.” Regarding M Crim JI 5.8a(1), defense counsel noted that the instruction as given did not conform to the evidence defense provided during trial which related to non-violence and domestic relationships, not truthfulness. Although defense counsel indicated that she wanted to place her objections on the record, she did not ask the trial court to provide additional clarification to the jury.

On appeal, defendant continues to argue that he was entitled to an instruction on the use and significance of character evidence pursuant to M Crim JI 5.8a(1). Before reaching the merits of defendant’s claim, we note that arguably defendant abandoned this claim on appeal by failing to provide any supporting authority, citation to the lower court record, or meaningful argument on the issue. See *People v Payne*, 285 Mich App 181, 195; 774 NW2d 714 (“An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment with little or no citation of supporting authority.” (citation omitted)). In its entirety, defendant’s inadequately briefed argument on this point was as follows:

Furthermore, the jury was not instructed they had heard evidence about defendant’s character and how to consider this evidence. Nor were they informed that the evidence of good character alone may sometimes create a reasonable doubt in their minds and lead them to find a defendant not guilty, as noted in [M Crim JI] 5.8a(1).

The prosecution has also provided this Court with cursory analysis of the issue, offering the perfunctory assertion that the instruction given at trial regarding a “witness’ truthfulness” should be held to “substantially cover” defendant’s request for an instruction on his character evidence. Although both parties have provided subpar briefing and we could well decline to consider the matter, we will nevertheless reach the merits of defendant’s argument to ensure a proper determination of the case. See *People v Rao*, 491 Mich 271, 289 n 4; 815 NW2d 105 (2012).

Because defendant objected to the adequacy of the instructions given at trial and specifically requested M Crim JI 5.8a(1), he has preserved his claims for appellate review. See *People v Martin*, 271 Mich App 280, 353; 721 NW2d 815 (2006). We thus review de novo his claim of instructional error. *People v Perez*, 469 Mich 415, 418; 670 NW2d 655 (2003). “Jury instructions must clearly present the case and the applicable law to the jury.” *People v McGhee*, 268 Mich App 600, 606; 709 NW2d 595 (2005). “The instructions must include all elements of the charged offenses and any material issues, defenses, and theories if supported by the evidence.” *Id.* Instructions must be considered “as a whole, rather than piecemeal, to determine whether any error occurred.” *People v Kowalski*, 489 Mich 488, 501-502; 803 NW2d 200 (2011). Even if imperfect, an instruction given to the jury is not grounds for setting aside a conviction if the instruction “fairly presented the issues to be tried and adequately protected the

confusing; and, we agree that an instruction on rebuttal witnesses was not warranted because the prosecution called no rebuttal character witnesses. Nevertheless, even assuming some error in this instruction, on its own, the reading of this instruction does not require reversal.

defendant's rights.” *Id.* at 502. Reversal for failure to provide a jury instruction requested by a defendant is unwarranted unless it appears that it is more probable than not that the error was outcome determinative. *People v McKinney*, 258 Mich App 157, 163; 670 NW2d 254 (2003). The defendant bears the burden of establishing that the failure to give the requested instruction resulted in a miscarriage of justice. *People v Dupree*, 486 Mich 693, 702; 788 NW2d 399 (2010).

Relevant to defendant’s claims, M Crim JI 5.8a(1) provides:

(1) You have heard evidence about the defendant’s character for [peacefulness / honesty / good sexual morals / being law-abiding / (*describe other trait*)]. You may consider this evidence, together with all the other evidence in the case, in deciding whether the defendant committed the crime with which (he / she) is charged. Evidence of good character alone may sometimes create a reasonable doubt in your minds and lead you to find the defendant not guilty.

In this case, defendant is correct that the trial court did not read this instruction to the jury or otherwise inform the jury about the proper use of character evidence presented by defendant. As noted, the trial court did instruct the jury that “you’ve heard testimony . . . about witness’ truthfulness. You may consider this evidence together with all other evidence in the case in deciding whether you believe the testimony of the witness, inn [sic] deciding how much weight to give to that evidence.” Contrary to the prosecution’s arguments on appeal, this instruction—which appears more akin to M Crim JI 5.8(1) than 5.8a(1)—did not “substantially cover” defendant’s requested instruction; that is, the instruction did not adequately protect defendant’s rights or fairly present the importance of character evidence to the jury.

Specifically, the instruction failed to mention either defendant or his character evidence relating to his peacefulness, and it failed to advise the jury that evidence of good character alone may be sufficient to create a reasonable doubt. Rather than instruct the jury that defendant’s good character could be considered in relation to whether defendant committed the crime, the instruction references the truthfulness of some unnamed witness. Indeed, defendant did not testify at trial, meaning that, even if the instruction could be construed as referring to defendant, the truthfulness of his testimony would be irrelevant. Instead, the germane consideration was whether the character evidence regarding defendant’s peacefulness could be used in determining defendant’s guilt and could, on its own, create a reasonable doubt. The record shows that the trial court offered absolutely no instruction in this regard, despite repeated requests for such an instruction.

Having reviewed the lower court record, we are also persuaded that defendant was entitled to the sought after instruction on his character evidence. Defendant introduced testimony at trial from a family friend who had grown up on defendant’s street and known him all her life. She testified that: (1) in her opinion defendant was a peaceful person, and (2) that he

had a reputation in the community, including at the time of the murder, as a peaceful person.⁶ Clearly, her testimony constituted evidence on defendant's character for peacefulness. See generally MRE 405 ("In all cases in which evidence of character or a trait of character of a person is admissible, proof may be made by testimony as to reputation or by testimony in the form of an opinion."). And, accordingly, defendant was entitled to an instruction on the use of this character evidence.

Based on well established caselaw, the trial court's failure to instruct the jury on the use of character evidence when defendant requested such an instruction and presented evidence warranting such an instruction necessitates reversal of defendant's conviction and remand for a new trial. It has long been recognized that "good character is a proper element to be considered by the jury in every criminal case where an attempt is made to show good character." *People v McKeighan*, 205 Mich 367, 374; 171 NW 500 (1919). Indeed, evidence of good character alone may be enough to cause reasonable doubt. *People v Neal*, 290 Mich 123, 128-129; 287 NW 403 (1939). Where a jury is not adequately instructed on the use of good character evidence, a trial court may be said to deny a defendant the full benefit his character evidence might otherwise afford him. See *People v Jassino*, 100 Mich 536, 537; 59 NW 230 (1894). In other words, it has been said in relation to the failure to give a character instruction that "[i]t must be always regarded as a miscarriage of justice when the trial court affirmatively denies to a respondent the benefit of an elementary rule favorable to him, upon which, by the giving of testimony which invokes the application of the rule, he relies." *People v Humphrey*, 194 Mich 10, 17; 160 NW 445 (1916).

For this reason, failure to give a proper instruction on character evidence when such an instruction is requested and is warranted on the evidence presented at trial has been repeatedly held as error requiring reversal. See, e.g., *People v Simard*, 314 Mich 624, 631; 23 NW2d 106 (1946); *McKeighan*, 205 Mich at 374; *People v Van Dam*, 107 Mich 425, 429; 65 NW 277 (1895); *People v Garbutt*, 17 Mich 9, 14 (1868). For example, in *People v Lane*, 304 Mich 29, 30; 7 NW2d 210 (1942), the trial court refused a request for a character instruction despite the presentation of several witnesses who testified regarding the defendant's reputation. The Michigan Supreme Court reversed, stating:

The court refused to give the requested instruction, and failed entirely to charge the jury as to the importance or effect of such testimony. Defendant was charged with murder of the first degree, involving the element of malice aforethought. The verdict was based largely on circumstantial evidence. We have repeatedly

⁶ At trial, defendant also offered testimony from his sister, who described defendant's service in the military and work history, as well as testimony from a former girlfriend, who indicated that defendant had not been violent or abusive during their relationship. However, neither offered the type of opinion or reputation testimony which comprises character evidence. MRE 405. See also *People v Jones*, 48 Mich App 102, 105; 210 NW2d 145 (1973) (holding jury instruction on character was not warranted where the defendant's evidence related to "factual statements of a neutral character" such as evidence of military service and marital status).

held that failure to charge the jury upon the effect of testimony to show character and good reputation is reversible error. [*Id.*]

Similarly, in the present case, the trial court refused defendant's request for a character instruction, despite defendant's presentation of evidence relating to his character for peacefulness. Further, the evidence presented at trial to establish that defendant committed a murder 30 years ago was largely circumstantial and indeed heavily focused on establishing defendant had a motive for the crime. There was minimal evidence—consisting mainly of a pair of defendant's shoes and eyewitness identification of a shadow in a darkened house—to place defendant at the home where the murder occurred. Given these circumstances, the denial of defendant's request for an instruction on character evidence, where defendant presented evidence relating to his peaceful character, constitutes a miscarriage of justice requiring reversal of defendant's conviction and remand for a new trial.

We note that, on appeal, defendant raises two additional claims of instructional error as well as allegations of prosecutorial misconduct. While we find it unnecessary to consider the issues in detail, we briefly recognize that the trial court should have read M Crim JI 4.11 in its entirety. That is, although the trial court's instructions on other acts evidence may not have been so inadequate as to warrant reversal, they were certainly imperfect and the trial court would have done better to adhere to M Crim JI 4.11. On remand, if other acts evidence is again presented, the jury should be so instructed. Regarding defendant's claim that the trial court erred by failing to read M Crim JI 4.5(1), we note that defendant abandoned this claim by failing to adequately brief the issue and, in particular, to identify in the lower court record any prior inconsistent statements offered solely for impeachment purposes that would warrant instruction under M Crim JI 4.5(1). See *Payne*, 285 Mich App at 195. We decline to consider the issue further. Lastly, we note also that we have reviewed defendant's claims of prosecutorial misconduct—specifically, that the prosecutor improperly claimed special knowledge of domestic violence abusers and appealed to the jurors' civic duty—and we find these claims to be without merit.

Reversed and remanded. We do not retain jurisdiction.

/s/ Jane M. Beckering
/s/ Joel P. Hoekstra
/s/ Elizabeth L. Gleicher