

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOANNE KIM ALEXANDER,

Defendant-Appellant.

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UNPUBLISHED

February 3, 2009

No. 283194

Kalamazoo Circuit Court

LC No. 07-000929-FH

Before: Hoekstra, P.J., and Fitzgerald and Zahra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of embezzlement by an agent of money with a value of \$20,000 or more but less than \$50,000, MCL 750.174(5)(a). She was sentenced to five years of probation with 90 days to be served in jail. She appeals as of right. We affirm.

Defendant's conviction arises from a missing bank deposit that was in defendant's care in her position as general cashier for Radisson Hotel. Her job duties included handling all cash and check deposits that came into the hotel and preparing them for pickup by an armor car service, AT Systems Services, for transport to the bank. (Tr I, pp 197-198.) Approximately \$29,000 in cash and \$16,000 in checks that were supposed to have been deposited on November 27, 2006, were never deposited. (Tr I, pp 206-208.) Defendant transferred a deposit to AT Systems Services on that day, but it was from November 19, 2006. (Tr I, pp 208-209, 224-225; Tr II, p 351.) Although AT Systems Services made pickups three times a week, defendant delayed deposits for approximately eight days on three other occasions and would not provide an explanation to the police for her conduct. (Tr I, pp 208-210, 226-235; Tr II, pp 271, 389-391.) When the controller and assistant controller asked defendant if she had any information about where the November 27, 2006, deposit could have gone, she seemed very calm, not very concerned, and suggested that it may have fallen behind some of the money in her safe or behind a file cabinet. (Tr I, pp 211-212; Tr II, pp 262-263, 275.) One of three copies of the bank deposit slip that defendant completed that corresponded to the missing deposit was discovered approximately two weeks later in a drawer in defendant's office. (Tr I, pp 206-207, 241; Tr II, p 395.) The AT Systems Services form, which should have been completed at the same time, was never prepared. (Tr I, pp 205-206, 213-214, 223, 251.) Only defendant had the full combination to the safe where the money was kept. (Tr II, pp 266-267.) In the previous 21 years that the payroll manager worked at the hotel, the November 27, 2006, deposit was the only instance of a missing deposit. (Tr II, p 343.)

Defendant failed to pay her car payments in August, September, October, and November 2006. (Tr II, pp 370-372.) After the financing agency sent a delinquency letter, she made a payment of \$1,040 in two \$500 money orders and \$40 in cash on December 20, 2006. (Tr II, pp 372-377.) Her credit history indicated several delinquent accounts and others that were in collection. (Tr II, p 398.)

When the police searched defendant's apartment on December 22, 2006, they found past due notices from the I.R.S., and hundreds of lottery tickets. (Tr II, pp 381, 386, 397.) Her cell phone records showed more than 2,000 phone calls to a lottery hotline between February 2006 and January 2007, including 77 calls during the week after the theft. (Tr II, pp 393, 401-406.)

Over defendant's objection, the prosecution admitted evidence of missing bank deposits while defendant worked as a business service manager for Davenport University and was responsible for managing all student tuition payments and daily deposits at the Kalamazoo campus of Davenport University. (Tr II, pp 435, 448.) According to written policy, defendant was supposed to make daily deposits, but usually did not do so. (Tr II, pp 439-440, 473-474.) From April 7, 2003, through January 19, 2004, 14 deposits, consisting of approximately \$80,000 in checks that were never found or cashed and \$9,028.24 in cash, were not deposited. (Tr II, pp 438-439.) Defendant was the only person responsible for making the deposits. (Tr II, p 443.)

The prosecution did not present direct evidence of the outcome of the Davenport University investigation. However, the prosecution elicited testimony that when defendant's apartment was searched in December 2006, the police discovered a folder or binder for the "Davenport embezzlement case" she had been involved in. (Tr II, pp 382, 397.) The folder contained police reports, a jury instruction on the elements of embezzlement (Tr II, pp 383, 397), and a receipt and copy of a cashier's check for \$6,000 made out to the court on September 5, 2006, which was described by the prosecution as being "for the payment of restitution in the Davenport case." (Tr II, pp 432-433.)

On appeal, defendant argues that she was denied a fair trial by the introduction of a "plethora" of other bad acts evidence and argument. She primarily focuses on the evidence concerning Davenport University, but also mentions evidence of "her delinquency with paying her bills; her purchase of an extensive number of lottery tickets; and her placement of numerous phone calls to a lottery hotline." Because defendant did not object to the evidence concerning her bills, lottery tickets, or the calls to the lottery hotline, her challenge to the admission of this evidence is not preserved.

When the issue is preserved, this Court reviews a trial court's decision regarding the admissibility of other-acts evidence for an abuse of discretion, *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998), i.e., when the court chooses an outcome that falls outside the range of reasonable and principled outcomes, *People v Orr*, 275 Mich App 587, 588-589; 739 NW2d 385 (2007). This Court reviews unpreserved claims of evidentiary error for plain error affecting substantial rights pursuant to *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999), reh den 461 Mich 1205 (1999). *People v Whittaker*, 465 Mich 422; 635 NW2d 687 (2001)

MRE 404(b)(1) precludes 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." The evidence

may be admitted for other purposes, however, including “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 . . .” MRE 404(b). To be admissible under MRE 404(b), other acts evidence generally must satisfy three requirements: (1) it must be offered for a proper purpose, (2) it must be relevant, and (3) its probative value must not be substantially outweighed by its potential for unfair prejudice. *People v Knox*, 469 Mich 502, 509; 674 NW2d 366 (2004).

In this case, defendant does not dispute that the “other bad acts evidence” was offered for a proper purpose and was relevant. (Defendant’s brief, p 13.) She argues only that the evidence should have been excluded because the danger of unfair prejudice substantially outweighed the probative value.

Defendant’s failure to adhere to Davenport University’s policy regarding daily deposits and the 14 deposits that disappeared while she was responsible for them was highly probative in establishing her plan, scheme, or system, which showed that the missing deposit from the Radisson Hotel was converted, rather than lost as defendant proposed. See *People v Sabin (After Remand)*, 463 Mich 43, 61-68; 614 NW2d 888 (2000). The evidence was also probative of defendant’s identity as the individual who took the money. Cf. *People v Smith*, 243 Mich App 657, 669-676; 625 NW2d 46 (2000), remanded on other grounds, 465 Mich 931 (2001). The evidence was prejudicial to defendant because of its probative value. However, the danger of *unfair* prejudice did not substantially outweigh the probative value of the evidence. Therefore, the trial court’s decision to admit the evidence was not an abuse of discretion.

The evidence concerning defendant’s delinquent bills, the numerous lottery tickets, and the calls to the lottery hotline was admissible to prove motive and, accordingly, was not plain error. *Carines, supra*, p 763.

Defendant argues that the prosecutor exacerbated the harm from the admission of the evidence by emphasizing the other bad acts and urging the jury to convict her because of her purported actions at Davenport University. To the extent that she is arguing prosecutorial misconduct, because she did not object to the prosecutor’s conduct at trial, we again review the issue for plain error pursuant to *Carines, supra*. The prosecutor’s explanation to the jury of the importance of the evidence was consistent with the permissible purposes for admitting the evidence. No plain error occurred.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ E. Thomas Fitzgerald  
/s/ Brian K. Zahra