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STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED August 18, 2026 1:07 PM
v	No. 369335 Ionia Circuit Court
MANDY MARIE BENN, Defendant-Appellant.	LC No. 2022-018675-FC

Before: BOONSTRA, P.J., and YOUNG and KOROBKIN, JJ.

PER CURIAM.

Defendant, Mandy Marie Benn, appeals by right following her jury-trial convictions on two counts of second-degree murder, MCL 750.317; two counts of operating a motor vehicle while intoxicated (OWI) causing death, MCL 257.625(4)(a); two counts of reckless driving causing death, MCL 257.626(4); two counts of OWI causing serious impairment, MCL 257.625(5); two counts of reckless driving causing serious impairment, MCL 257.626(3); and three counts of possession of a controlled substance, MCL 333.7403(2)(b)(ii).[1] On appeal, defendant makes various objections related to the admission of other-acts evidence regarding a 2017 impaired-driving incident, and challenges the imposition of consecutive sentences for her second-degree murder convictions. For the reasons set forth below, we affirm defendant's convictions but remand for further sentencing proceedings consistent with this opinion.

I. BACKGROUND AND FACTS

Defendant's convictions arose out of events that occurred on July 30, 2022 in Ronald Township. That day, James Barr, Roland Pascua, Timothy Kolanowski, Edward Erickson, and Michael Salhaney were riding together in a three-day, 300-mile charity bike ride to raise funds for the Make-a-Wish Foundation. Although slightly offset, the bicyclists were riding essentially

[1] The jury also convicted defendant of OWI, MCL 257.625(1), and reckless driving, MCL 257.626. However, at sentencing, the court granted the prosecution's motion to dismiss those convictions thereby vacating defendant's convictions for these two offenses.

single file southbound on Stage Road. Because there was no paved shoulder, the cyclists were riding along the road's white fog line. Defendant was driving northbound on Stage Road and was traveling behind a delivery truck. At approximately 11:15 a.m., defendant, apparently intending to pass the truck, entered the southbound lane of Stage Road, at which point she struck the five men. Erickson and Salhaney died from the injuries sustained in this collision. Pascua and Kolanowski sustained severe injuries. Barr walked away with minor injuries.

Defendant was charged with the offenses described above. At trial, the prosecution's case was based on the theory that defendant caused the death of two individuals and seriously injured two others because she was driving while intoxicated. Defendant tested positive for several controlled substances in her system. By contrast, defendant asserted that the incident was merely an accident; that there was no evidence that she had the drugs in her system at the time of the accident, i.e., she could have ingested the pills after the fact at the scene; and that her erratic behavior both before and after the accident was attributable to a head injury possibly sustained at some unknown time during a domestic altercation. The jury ultimately found defendant guilty of the charged offenses. The trial court sentenced defendant to 35 to 60 years' imprisonment for each second-degree murder conviction; 10 to 15 years' imprisonment for each OWI-causing-death and reckless-driving-causing-death conviction; 3 to 5 years' imprisonment for each OWI-causing-serious-impairment and reckless-driving-causing-serious-impairment conviction; and 1 to 2 years' imprisonment for each controlled-substance-possession conviction. The court ordered that defendant's sentences for her second-degree murder convictions be served consecutively, and that the remaining sentences be served concurrently to one another and to the first second-degree murder conviction.

Defendant now appeals.

II. ANALYSIS

A. OTHER-ACTS EVIDENCE

Defendant first contends that the trial court erred in admitting evidence of a 2017 incident when, while under the influence of several controlled substances, she drove a vehicle through a hayfield, eventually came to rest in an individual's backyard, and was ultimately arrested and convicted of operating while impaired. We disagree.

This Court reviews for an abuse of discretion a trial court's decision to admit or exclude evidence. *People v Thorpe*, 504 Mich 230, 251; 934 NW2d 693 (2019). "A trial court abuses its discretion when it selects an outcome that does not fall within the range of reasonable and principled outcomes." *People v Snyder*, 301 Mich App 99, 104; 835 NW2d 608 (2013) (quotation marks and citation omitted). "Interpretation of the rules of evidence," however, "is an issue of law that this Court reviews de novo." *People v Hawkins*, 349 Mich App 271, 274; 27 NW3d 641 (2023).

Defendant challenges the admission of the other-acts evidence under MRE 404(b)(1),[2] which at the time of defendant's trial,[3] stated:

> 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.

"The general rule under MRE 404(b) is that evidence of other crimes, wrongs, or acts is inadmissible to prove a propensity to commit such acts." *People v Denson*, 500 Mich 385, 397; 902 NW2d 306 (2017). MRE 404(b) is "a rule of inclusion, meaning it permits the admission of any logically relevant evidence 'even if it also reflects on a defendant's character,' so long as the evidence is not 'relevant solely to the defendant's character or criminal propensity.' " *People v Spaulding*, 332 Mich App 638, 649; 957 NW2d 843 (2020) (emphasis omitted), quoting *People v Mardlin*, 487 Mich 609, 615-616; 790 NW2d 607 (2010). Thus, the admissibility of other-acts evidence is subject to a three-prong test: it "is admissible when it is offered for a proper purpose, MRE 404(b)(1); it is relevant under MRE 402; and its probative value is not substantially outweighed by unfair prejudice, MRE 403." *People v Bergman*, 312 Mich App 471, 493; 879 NW2d 278 (2015), citing *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994).

Under the first prong of this test, "the question is whether the prosecution has articulated a proper noncharacter purpose for admission of the other-acts evidence[,] . . . such as one of the purposes specifically enumerated in MRE 404(b)(1)." *Denson*, 500 Mich at 398-399; see also *Mardlin*, 487 Mich at 615-616 (explaining that the list of proper purposes set forth in MRE 404(b)(1) is not exhaustive). For the second prong, evidence is relevant when it "ha[s] any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." MRE 401. And regarding the third prong, "[a]ll evidence offered by the parties is 'prejudicial' to some extent, but the fear of prejudice does not generally render the evidence inadmissible. It is only when the probative value is substantially outweighed by the danger of unfair prejudice that evidence is excluded." *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995), mod 450 Mich 1212 (1995) (emphasis

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[2] Defendant also asserts that the admission of the disputed evidence deprived her of her constitutional right to a fair trial. But "[a]lthough any error can potentially be argued to have deprived a defendant of h[er] due-process fair-trial right, not every trial error is constitutional in nature." *People v Blackmon*, 280 Mich App 253, 261; 761 NW2d 172 (2008). As presented, we do not consider the alleged error to be of constitutional magnitude and therefore confine our analysis to the question of whether the evidence in question was properly admitted under MRE 404(b).

[3] Substantial amendments to the Michigan Rules of Evidence went into effect on January 1, 2024. See 512 Mich lxiii (2023). We rely on the rules of evidence in effect at defendant's trial.

omitted). "Unfair prejudice may exist where there is a danger that the evidence will be given undue or preemptive weight by the jury or where it would be inequitable to allow use of the evidence." *People v Blackston*, 481 Mich 451, 462; 751 NW2d 408 (2008).

Applying this test to the facts at hand, we find no abuse of discretion in the trial court's admission of the other-acts evidence. Regarding the first prong—admissibility for a proper purpose—although defendant contends that the 2017 incident did not show a common plan, scheme, or system, the prosecution sought to admit the evidence for other proper noncharacter purposes enunciated in MRE 404(b)(1), including knowledge and absence of mistake. More specifically, as articulated in its motion to admit the other-acts evidence, the prosecution sought to admit this evidence to establish that defendant had the requisite degree of malice to be convicted of second-degree murder by showing that "[d]efendant knew that when she consumed drugs, it affected her thought process, her behavior, her decision making process, her ability to operate the vehicle safely, and that there was no mistake in its effects on her." These noncharacter purposes satisfy the first element of the applicable standard. See *Werner*, 254 Mich App at 529-530, 539-540 (finding that the prosecution articulated a permissible purpose for admitting evidence of a prior drunk-driving incident in an appeal of convictions for second-degree murder and operating a motor vehicle while under the influence of intoxicating liquor (OUIL) causing death when "to show that [the] defendant possessed the requisite degree of malice for second-degree murder, the prosecution showed that [the] defendant knew that heavy drinking could lead to a blackout, and that a blackout could lead to [the] defendant's driving without any understanding of what he was doing"); *Bergman*, 312 Mich App at 481, 494 (finding the first prong satisfied in an appeal regarding convictions for second-degree murder and OUIL causing death because the other-acts evidence that "involved incidents in which [the] defendant either drove unsafely, . . . was involved in an accident while impaired or under the influence of prescription substances, or was in possession of pills" was admitted "to show [the] defendant's knowledge and absence of mistake").

As to the second prong—the relevance of the evidence—we are likewise persuaded that evidence of the 2017 incident is relevant. When "the prosecution creates a theory of relevance based on the alleged similarity between a defendant's other act and the charged offense," as here, "we require a 'striking similarity' between the two acts to find the other act admissible." *Denson*, 500 Mich at 403 (citation omitted). Such a striking similarity is present here. The evidence established that in the 2017 incident, defendant tested positive for hydrocodone, diazepam, alprazolam, tramadol, and amphetamine. Methamphetamine was detected but not quantified. After the 2022 incident, defendant tested positive for hydrocodone, lorazepam, buprenorphine, and norbuprenorphine. Not only did defendant test positive for hydrocodone in both 2017 and 2022, but drugs she abused in both cases were of the same classification, i.e., opioids and benzodiazepines. Moreover, defendant's response to the drugs in her system was substantially similar. In both instances, defendant drove unsafely and in areas where driving was either impermissible or highly imprudent. Moreover, based on eye-witness accounts, in both events, defendant exhibited confusion, balance issues, and difficulty following directions. These incidents are accordingly substantially similar, cf. *Denson*, 500 Mich at 406-407 (concluding that evidence of a prior incident did not bear a striking similarity to the charged offense when the prior act "involved a completely different situation" and "the only similarity between the[] two incidents

[wa]s that both were assaults allegedly committed by [the] defendant"),[4] and indeed, evidence of the 2017 incident "was relevant to the malice element for second-degree murder because it was probative of defendant's knowledge of her inability to drive safely after consuming [controlled] substances." *Bergman*, 312 Mich App at 494. See also *Werner*, 254 Mich App at 540 (finding evidence of a prior drunken driving incident relevant in an appeal of second-degree murder and OUIL convictions because "[t]he fact that [the] defendant had previously experienced an alcohol-induced blackout while driving made it more probable than not that he was aware this could happen to him").

And regarding the third prong—unfair prejudice—because the prior incident was minor in comparison to the charged offenses, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice under MRE 403. See *Bergman*, 312 Mich App at 494; *Werner*, 254 Mich App at 540. The 2017 incident did not result in any injuries. At most, there likely was some property damage. By contrast, the results of the 2022 events were catastrophic. In the present matter, defendant unsafely entered an oncoming traffic lane and struck five men, causing deaths to two of the men and serious injuries to two others. Considering the dichotomy between the two events, it is unlikely that the jury gave the 2017 incident undue weight. See *Blackston*, 481 Mich at 462. Moreover, the trial court conveyed the appropriate limiting instruction to reduce any potential for prejudice, informing the jury that it could consider the other-acts evidence only for a proper purpose and that it could "not decide that [the evidence] shows the [d]efendant is a bad person or that she's likely to commit crimes." See *Werner*, 254 Mich App at 540 (finding that the trial court did not abuse its discretion in admitting other-acts evidence when the jury was given this same instruction). On this record, there was no basis to exclude the evidence under MRE 403.

Accordingly, we conclude that evidence of defendant's 2017 impaired-driving incident was admissible under MRE 404(b)(1) as probative of a permissible noncharacter purpose. See *Bergman*, 312 Mich at 493; *Hawkins*, 349 Mich App at 274. The trial court thus did not abuse its discretion by admitting this other-acts evidence. *Thorpe*, 504 Mich at 251; *Snyder*, 301 Mich App at 104.

In light of this conclusion, we are also unpersuaded by defendant's argument that, excluding the other-acts evidence, insufficient evidence supported her second-degree murder convictions. Defendant premises her sufficiency-of-the-evidence argument entirely on the

[4] We note that defendant focuses heavily on the elapse of about five years after the 2017 incident before the 2022 incident, and on the fact that, unlike the 2017 incident, defendant was not driving under the influence of methamphetamine in 2022. We are unpersuaded that these factors make the 2017 incident irrelevant. The extremity of the 2017 incident makes it highly unlikely that defendant had forgotten it just five years later, and most specifically that the five-year difference made her unaware of the impacts of taking controlled substances on her behavior and driving abilities. Further, given the substantial similarities with respect to the drugs abused and defendant's physical response to them in the 2017 and 2022 incidents, we are unpersuaded that the presence of an unquantifiable amount of methamphetamine, as testified to at trial, renders the incidents so different as to make evidence of the 2017 incident inadmissible.

incorrect assertion that the other-acts evidence was improperly admitted, contending that without that evidence, there was insufficient support for the finding that defendant possessed the requisite state of mind of malice to commit second-degree murder. Because we have concluded that the admission of the other-acts evidence was not an abuse of discretion, we need not address whether, had that evidence been excluded, there would have been insufficient evidence of malice to convict defendant of second-degree murder.

We are likewise unpersuaded by defendant's complaint that she was deprived of her Sixth Amendment right to effective assistance of counsel when her trial counsel failed to object to the admission of the other-acts evidence. "To establish a claim of ineffective assistance of counsel, . . . defendant must show that counsel's performance was deficient and that counsel's deficient performance prejudiced the defense." *People v Fyda*, 288 Mich App 446, 450; 793 NW2d 712 (2010). And, pertinent for our purposes, "[f]ailure to raise a futile objection . . . does not constitute ineffective assistance of counsel." *People v Isrow*, 339 Mich App 522, 532; 984 NW2d 528 (2021). Because we have concluded that evidence of the 2017 incident was permissibly admitted, such an objection would have been futile. Thus, defendant's trial counsel did not render deficient performance in failing to raise such a futile objection, see *id.*, and accordingly, defendant was not deprived of her Sixth Amendment right to effective assistance of counsel, see *Fyda*, 288 Mich App at 450.[5]

B. CONSECUTIVE SENTENCING

Defendant also contends that the trial court abused its discretion by imposing consecutive sentences for her second-degree murder offenses. For the reasons explained below, we remand for further proceedings and retain jurisdiction.

In our state, "concurrent sentencing is the norm, and a consecutive sentence may be imposed only if specifically authorized by statute." *People v Johnson*, 350 Mich App 560, 568; 34 NW3d 1 (2024) (quotation marks and citation omitted). Whether a statute permits the imposition of a consecutive sentence "is a question of statutory interpretation that we review de novo." *People v Parker*, 319 Mich App 410, 414; 901 NW2d 632 (2017). "[W]hen a statute grants a trial court discretion to impose a consecutive sentence, the trial court's decision to do so is reviewed for an abuse of discretion, i.e., whether the trial court's decision was outside the range of reasonable and principled outcomes." *People v Norfleet*, 317 Mich App 649, 654; 897 NW2d 195 (2016). In addition, we review a trial court's "underlying factual findings in support of a sentence . . . for clear error." *People v Taylor*, 510 Mich 112, 128; 987 NW2d 132 (2022). To facilitate appellate review and to "help ensure that the strong medicine of consecutive sentences is reserved for those situations in which so drastic a deviation from the norm is justified[,]" trial courts are required to "articulate their rationale for the imposition of each consecutive sentence"

[5] Defendant alternatively requests a remand for an evidentiary hearing pursuant to *People v Ginther*, 390 Mich 436; 212 N2d 922 (1973). "Because defendant has not set forth any additional facts that would require development of a record to determine if defense counsel was ineffective," we deny the request. *People v Williams*, 275 Mich App 194, 200; 737 NW2d 797 (2007), citing MCR 7.211(C)(1)(a).

by specifically providing "particularized reasons—with reference to the specific offenses and the defendant." *Norfleet*, 317 Mich App at 665-666 (quotation marks omitted).

We thus begin our analysis with an examination of the relevant statutory authority. See *Johnson*, 350 Mich App at 568. MCL 769.36(1) provides, in pertinent part:

> A person may be charged with and convicted of any of the following for each death arising out of the same criminal transaction and the court may order the terms of imprisonment to be served consecutively to each other:
>
> * * *
>
> (b) Section 317 or 321 of the Michigan penal code, 1931 PA 328, MCL 750.317 and 750.321, where death results from the operation of a vehicle . . . .

"Use of the permissive term 'may' in a statute signals the Legislature's intent to leave the permissive action to the discretion of the trial court." *People v Hines*, ___ Mich App ___, ___; ___ NW3d ___ (2025) (Docket No. 363151); slip op at 16. MCL 769.36(1)(b) thus authorizes a trial court to impose a consecutive sentence for second-degree murder convictions under MCL 750.317 when death results from the operation of a vehicle.

Given that the trial court had discretion by MCL 769.36(1)(b) to impose a consecutive sentence for defendant's second-degree murder offenses, we are next tasked with determining whether the trial court abused its discretion in choosing to do so. See *Norfleet*, 317 Mich App at 654. Our review is hindered, however, by the trial court's failure to explain its reasoning.

Before stating defendant's sentence, the trial court explained the numerous considerations it was weighing in fashioning that sentence, including defendant's lack of remorse, the extremity of the loss suffered by the victims, and the need to protect the public. The trial court then enunciated the incarceration terms to which defendant was sentenced, explaining defendant's various concurrent sentences for her OWI-causing-death, reckless-driving-causing-death, OWI-causing-serious-impairment, reckless-driving-causing-serious-impairment, and controlled-substance-possession offenses. The court finished its articulation of defendant's sentence by imposing the consecutive sentences for defendant's two second-degree murder offenses, stating:

> Now, on Count 1, — this is the charge of second[-]degree murder — the Court's going to adopt the recommendation from the Department of Correct[ion]s for all the reasons I've previously stated on the record. I'm going to impose this minimum sentence of 35 years with the Michigan Department of Corrections to 60 years. You will receive credit for 439 days that you have previously served, and this will run concurrent with Counts 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, and 13.
>
> And as it relates to Count 2, the second count of second[-]degree murder, the Court's going to impose a sentence — again, the recommendation, I think, is appropriate — of 35 years to 60 years with the Michigan Department of Corrections. You do receive credit for 439 days you've previously served. This sentence, however, will run consecutive to Count 1.

The trial court thus failed to provide "particularized reasons" for ordering that defendant's sentence on Count 2 run consecutively to her sentence on Count 1. *Norfleet*, 317 Mich App at 666. And without knowledge of the trial court's reasons for imposing consecutive sentences, we are unable to properly review whether the court's decision to fashion such a sentence constitutes an abuse of discretion. This is especially troublesome because "Michigan has a clear preference for concurrent sentencing," and consecutive sentencing is a "drastic deviation from the norm . . . ." *Id.* at 665 (quotation marks and citation omitted).

We therefore conclude that remand is necessary so that the trial court may articulate its reasoning for the consecutive sentences imposed, and we retain jurisdiction to allow for proper review of the trial court's rationale for an abuse of discretion. See *id.* at 666 (remanding for the trial court to articulate its reasoning for imposing consecutive sentences and retaining jurisdiction when the trial court "spoke only in general terms" and not "separately regarding each consecutive sentence"); *Hines*, ___ Mich App at ___; slip op at 17 (similarly remanding and retaining jurisdiction when the trial court "only noted its discretion in relation to" consecutive sentences "without further comment concerning its exercise of that discretion"). The trial court may, alternatively and in its discretion, resentence defendant to concurrent terms. See *Hines*, ___ Mich App at ___; slip op at 20.

III. CONCLUSION

For the reasons stated, the trial court did not abuse its discretion in admitting the disputed other-acts evidence, and accordingly we are unpersuaded that insufficient evidence supported defendant's second-degree murder convictions and that defendant was denied ineffective assistance of counsel when her attorney failed to object to the other-acts evidence. We remand, however, for the trial court to either articulate its rationale for imposing consecutive sentences or resentence defendant to serve those terms concurrently.

Affirmed in part and remanded for further proceedings consistent with this opinion. We retain jurisdiction.

/s/ Adrienne N. Young
/s/ Daniel S. Korobkin

Court of Appeals, State of Michigan

ORDER

PEOPLE OF MI V MANDY MARIE BENN

Docket No. 369335

LC No. 2022-018675-FC

Mark T. Boonstra
Presiding Judge

Adrienne N. Young

Daniel S. Korobkin
Judges

For the reasons stated in the opinion issued with this order, we REMAND this case for further proceedings. We retain jurisdiction. After the remand proceedings conclude, we will review the decisions that the trial court made during those proceedings and consider any remaining issues in this appeal. Any challenges to the trial court's decisions on remand must be raised in this appeal. Therefore, the parties and the trial court must not initiate a new appeal from an order entered on remand within the scope of this appeal. The Clerk of the Court is directed to reject the initiation of a new appeal from such an order.

Appellant must initiate the proceedings on remand within 42 days of the Clerk's certification of this order, and the trial court must prioritize this matter until the proceedings are concluded. As stated in the accompanying opinion, the trial court shall articulate its rationale for ordering Appellant's sentence on her second conviction for second-degree murder to run consecutively to her sentence on her first conviction for second-degree murder. Alternatively, the trial court may, in its discretion, resentence defendant to serve those terms concurrently. The proceedings on remand are limited to this issue.

The parties must serve copies of their filings in the trial court on this Court. Appellant must file with this Court copies of all orders entered on remand within seven days of entry. Appellant must ensure the transcript of all proceedings on remand is filed in the trial court and this Court within 21 days after completion of the proceedings. Either party may file a supplemental brief in this Court within 21 days after the conclusion of the remand proceedings.

Presiding Judge

A true copy entered and certified by Jerome W. Zimmer Jr., Chief Clerk, on

August 18, 2026
Date

Chief Clerk