

MSC Opinion: People v. Mardlin

3. August 2010 By Gaëtan Gerville-Réache

On July 31, 2010, the Michigan Supreme Court issued a 4-3 opinion in *People v. Mardlin*, No. 139146. Justice Corrigan, joined by Justices Markman, Young, and Weaver, wrote the majority opinion, which reversed the Court of Appeals and affirmed the trial court's admission of evidence of an unusual number of prior fires associated with property owned by the accused in this arson case. The Court held the evidence was admissible under the "doctrine of chances"—the more an unusual incident occurs, the less likely it is a mistake or accident. Because it was offered for that purpose, and not to prove bad character or propensity, it did not violate MRE 404(b)(1). And the lack of direct evidence of culpability for the past fires actually weighed in favor of, and not against, admission under MRE 403 because it minimized impermissible negative inferences about his character. Chief Justice Kelly, joined by Justices Cavanagh and Hathaway, authored a dissenting opinion, arguing that the doctrine of chances did not apply here, and even if it did, the evidence was inadmissible under MRE 403.

Frederick James Mardlin was accused of setting his home on fire to collect insurance proceeds. The prosecution presented evidence that Mardlin was the only one home just before his home caught fire and that he left for his brother's home shortly before the fire was reported. It also showed that Mardlin had fallen behind on mortgage payments and utility bills before the fire occurred. The investigating detective and a fire investigator for the insurer both testified that the fire had been intentionally set and originated from a love seat in the living room. Mardlin claimed the fire was an accident, caused by faulty electrical wiring.

To disprove that theory, the prosecution presented evidence of four other fires where property either owned or in the control of the defendant caught fire, under circumstances where the defendant either did or could have reasonably anticipated to benefit. The defendant provided innocent explanations for each of those fires as well. Ultimately, the jury convicted the defendant of arson of a dwelling and burning of insured property, and the court sentenced the defendant to concurrent sentences of up to 20 years. The Court of Appeals reversed the decision, holding that the evidence of the prior fires was inadmissible.

The Michigan Supreme Court reversed the Court of Appeals and affirmed admission of the evidence. The Court essentially held fast to the principle that evidence is inadmissible character evidence under MRE 404(b)(1) "only if it is relevant *solely* to the defendant's character or criminal propensity." In this case, the Court considered the prior four fires to be relevant to prove absence of mistake, one of the permissible grounds for admitting prior bad acts that is explicitly enumerated in MRE 404(b)(1). Much of the Court's discussion centered on explaining the probative value of the evidence under the "doctrine of chances."

The crux of the disagreement between the majority and the dissent centered on whether lack of similarities between this incident and the prior incidents meant the doctrine of chances was inapplicable or that the evidence

was so lacking probative value that it was inadmissible under MRE 403, given the temptation to treat it as character evidence. The majority rejected the dissent's notion that similarity was always necessary, instead holding that it depended on the prosecution's theory of relevance. The two camps also disagreed with the effectiveness of a limiting instruction given by the court to the jury, that it should not consider the evidence for the purpose of inferring bad character or criminal propensity. But in the end, this factor appeared to be given little weight by the majority in reaching its decision.