

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

---

No. 08-2482

---

United States of America,

Appellee,

v.

Michael Batee,

Appellant.

\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*  
\*

Appeal from the United States  
District Court for the  
Eastern District of Missouri.

[UNPUBLISHED]

---

Submitted: December 3, 2009  
Filed: December 8, 2009

---

Before BYE, BOWMAN, and BENTON, Circuit Judges.

---

PER CURIAM.

A jury found Michael Batee guilty of kidnapping, carjacking, possessing and brandishing a firearm in furtherance of crimes of violence, and being a felon in possession of a firearm. The District Court<sup>1</sup> entered judgment upon the verdict and sentenced Batee to a total of 444 months in prison—comprised of concurrent terms of 360 months, 180 months, and 120 months, plus a consecutive 84-month term—and three years of supervised release. Batee appeals, and his counsel has filed a brief under Anders v. California, 386 U.S. 738 (1967), challenging the court's decision

---

<sup>1</sup>The Honorable Stephen N. Limbaugh, Sr., United States District Judge for the Eastern District of Missouri, now retired.

during trial to allow the government to present evidence of other criminal acts committed by Batee.

The evidence at Batee's five-day trial included the testimony of the two victims of the charged conduct, who recounted that in July 2007, Batee and another man entered the victims' parked car with guns drawn and threatened to shoot them. The assailants forced the victims to drive from St. Louis, Missouri, to East St. Louis, Illinois. After the brother of one of the victims delivered \$1000 to Batee and his co-defendant, they released the victims but stole their car. The government also introduced evidence of Batee's July 2006 felon-in-possession conviction and his May 2007 arrest related to an uncharged kidnapping and carjacking where Batee brandished a firearm. Before this other-crimes evidence was presented, the court gave the jury a limiting instruction, which was repeated in the final jury instructions.

Rule 404(b) of the Federal Rules of Evidence prohibits the use of evidence of a defendant's other crimes, wrongs, or bad acts to prove character, but the rule permits the admission of such evidence to prove motive, opportunity, intent, preparation, plan, knowledge, or absence of mistake or accident. Fed. R. Evid. 404(b); United States v. Walker, 428 F.3d 1165, 1169 (8th Cir. 2005), cert. denied, 546 U.S. 1194 (2006). To be admissible, other crimes evidence must (1) be relevant to a material issue, (2) involve conduct proven by a preponderance of the evidence, (3) be of greater probative value than prejudicial effect, and (4) involve conduct similar in kind and close in time to a charged offense. Id. "We review admission of such evidence for abuse of discretion and will reverse only when the evidence clearly had no bearing on the case and was introduced solely to show defendant's propensity to engage in criminal misconduct." Id. Upon careful review, we conclude that any error in the admission of the other-crimes evidence in this case was harmless in light of the overwhelming evidence of Batee's guilt. See United States v. Farish, 535 F.3d 815, 820–21 (8th Cir. 2008) (concluding that even if admission of Rule 404(b) evidence

was abuse of discretion, error was harmless in light of strength of evidence supporting conviction).

We have independently reviewed the record under Penson v. Ohio, 488 U.S. 75, 80 (1988), for other nonfrivolous issues and have found none. Accordingly, we affirm, and we grant counsel's motion to withdraw, provided that counsel inform Batee about the procedures for filing pro se petitions for rehearing and for certiorari.

---