STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOHN ANTHONY ALES,

Defendant-Appellant.

UNPUBLISHED
June 19, 1998

No. 191172
Huron Circuit Court
LC No. 95-003723 FH

Before: MacKenzie, P.J., and Holbrook, Jr., and Saad, JJ.

PER CURIAM.

Defendant was convicted by a jury of malicious destruction of personal property over $100, MCL 750.377a; MSA 28.609(1). He subsequently pled nolo contendere to the charge of habitual offender, third offense, MCL 769.11; MSA 28.1083. Thereafter sentenced to three years' probation, with a total of 150 days to be spent in the county jail, he now appeals as of right. We affirm.

This case stems from an altercation that took place on the night of July 24, 1994, when defendant damaged the front fender of a car being driven by three young men, one of whom had previously sexually assaulted defendant's daughter. At the close of the prosecutor's case in chief, defense counsel moved for a continuance or leave to withdraw because defendant expressed dissatisfaction with counsel's performance. After the trial court indicated that it would not grant either motion, defendant remarked that he "want[ed] to make sure that everything gets out . . . like the reason why this case is even here is because of my daughter." The court responded, "[t]hat may not be relevant," and then advised defendant to cooperate with defense counsel. Defendant contends that the statement by the court--that the history between defendant's daughter and one of the passengers of the vehicle "may not be relevant"--amounted to a ruling that such evidence was in fact irrelevant and inadmissible, and therefore deprived defendant of the opportunity to present evidence on the issues of self-defense and defense of others. See CJI 7.22.

We are not persuaded. Defendant's argument is predicated on the erroneous assertion that the cited remark by the trial court constituted a ruling on the admissibility of the evidence. Because defendant had not specifically moved to introduce the evidence, we do not believe the trial court's

qualified comment amounted to a specific ruling on the admissibility of the disputed evidence. Further, we note that twice during the course of defendant's testimony the trial court let stand, over the objection of the prosecution, references to the sexual assault.

Additionally, we conclude that defendant's assertion that he acted in lawful defense of himself and others is without merit. It is not enough for defendant to simply claim that he was acting in such a manner; he must offer some evidence to support the argument that his actions should be excused under either theory. *People v Hoskins*, 403 Mich 95, 97; 267 NW2d 417 (1978); *People v Bell*, 155 Mich App 408, 414; 399 NW2d 542 (1986). Defendant has failed to offer such evidence.

Defendant asserts that on the night of July 24, 1994, the three young men pulled into his driveway and taunted him and his daughter with crude and obscene remarks referring to the sexual assault. Acknowledging that such behavior would likely enrage defendant, we do not believe that it justifies or excuses his actions. There is simply no evidence that defendant could reasonably have believed he had to use force to defend himself or his family. See CJI 7.22. Further, defendant testified at trial that when the three young men drove up, he ushered his children and his neighbor's children inside. At that point, both he and his family were inside and out of harm's way, eliminating the need to use force for protection. Accordingly, we cannot find that the issue, regardless of how it is framed, warrants reversal of defendant's conviction.

Defendant raises two other issues, neither of which have been preserved for appeal because they were not raised in defendant's statement of questions involved on appeal and are not supported by citation to supporting authority. *People v Price*, 214 Mich App 538, 548; 543 NW2d 49 (1995); *People v LaPorte*, 103 Mich App 444, 452; 303 NW2d 222 (1981). In any event, they have been reviewed and found to be without merit. Defendant's wife's conviction for embezzlement was admissible for impeachment purposes. MRE 609(a)(1); *People v Allen*, 429 Mich 558, 586; 420 NW2d 499 (1988). Defendant's assertion that the prosecutor objected to testimony sought to be elicited from two witnesses about what else defendant might have said to them is not substantiated by the record.

Affirmed.

/s/ Barbara B. MacKenzie
/s/ Donald E. Holbrook, Jr.
/s/ Henry William Saad