STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED June 23, 2000
v	Nos. 217450; 217451 Washtenaw Circuit Court
ROGER DALE STEPHENSON, Defendant-Appellant.	LC Nos. 98-010683-FH 98-010260-FH

Before: Meter, P.J., and Griffin and Talbot, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of ten felony offenses.[1] He appeals as of right and we affirm.

Defendant first argues that the trial court erred in admitting his statement that he did not drop his gun pursuant to police orders because "he'd rather get shot than go back to prison" or in

[1] Defendant was charged in two informations and the cases were consolidated and tried together. In Docket No. 217451 (LC No. 98-10260) defendant was convicted of and sentenced as follows: one count of armed robbery, MCL 750.529; MSA 28.797, twenty-five to sixty years; three counts of assault with a dangerous weapon, MCL 750.82; MSA 28.277, thirty-two to forty-eight months' imprisonment for each offense; and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), two years' imprisonment for each offense. In Docket No. 217450 (LC No. 98-10683) defendant was convicted and sentenced *as a fourth habitual offender*, MCL 769.12; MSA 28.1084, as follows: two counts of assault with a dangerous weapon, MCL 750.82; MSA 28.277, ten to fifteen years' imprisonment for each offense; and two counts of felony-firearm, MCL 750.227b; MSA 28.424(2), two years' imprisonment for each offense. The sentences are concurrent, and consecutive to two years' imprisonment for the felony-firearm convictions.

refusing to redact the word "back" from the statement. We disagree. This Court reviews a trial court's decision to admit evidence for an abuse of discretion. *People v Crawford*, 458 Mich 376, 385; 582 NW2d 785 (1998). An abuse of discretion exits when an unprejudiced person, considering the facts on which the trial court acted, would conclude that there was no justification or excuse for the ruling. *People v Hoffman*, 225 Mich App 103, 104; 570 NW2d 146 (1997).

Pursuant to MRE 404(b) evidence of other crimes, wrongs, or acts is admissible if the evidence is (1) offered for a proper purpose other than to prove the defendant's character or propensity to commit a crime (2) relevant to an issue of fact or consequence at trial, and (3) sufficiently probative to outweigh the danger of unfair prejudice. *People v VanderVliet*, 444 Mich 52, 55; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). Accord *Crawford*, *supra* at 385; *People v Starr*, 457 Mich 490, 496; 577 NW2d 673 (1998).

To the extent the contested evidence falls within the confines of MRE 404(b) as the parties claim, we hold that it was properly admitted for the proffered purpose of showing defendant's intent. At trial, defendant asserted the theory that he was intoxicated and therefore lacked the specific intent to commit armed robbery and felonious assault. In response, the prosecutor offered defendant's statement that he did not want to go back to prison to establish that he possessed the requisite intent when he assaulted two police officers after repeatedly refusing to drop his weapon; not to show that he was predisposed to commit the offenses. The evidence was relevant to negate defendant's theory with respect to an essential element of the offenses and the only element contested at trial. We also agree with the trial court that the word "back" only increased the statement's probative value because "someone who has been to prison once may fear it more than someone who has never been to prison." Further, the statement's probative value was not substantially outweighed by its prejudicial effect where the jury never heard evidence regarding the nature of the offense that led to imprisonment, and the jury twice received appropriate limiting instructions. MRE 403; *VanderVliet*, *supra* at 75; *People v Gibson*, 219 Mich App 530, 534; 557 NW2d 441 (1996). Therefore, the trial court did not abuse its discretion in admitting the contested evidence at trial.

Defendant also challenges the proportionality of his twenty-five year minimum sentence for armed robbery. Because the sentence falls within the guidelines range, it is presumptively proportionate, and defendant has failed to present evidence of "unusual circumstances" sufficient to rebut the presumption.[2] *People v Rivera*, 216 Mich App 648, 652; 550 NW2d 593 (1996). In light of the circumstances surrounding the offense, defendant's extensive criminal history which demonstrates a pattern of escalating severity, and that he committed the instant offense while on parole, we conclude that the trial court did not abuse its sentencing discretion. *People v*

[2] The record indicates that defendant was not sentenced as an habitual offender for the armed robbery conviction because the prosecution did not file a supplemental habitual information with the information charging that offense.

Milbourn, 435 Mich 630, 636; 461 NW2d 1 (1990); *People v Castillo*, 230 Mich App 442, 446; 584 NW2d 606 (1998).

Affirmed.

/s/ Patrick M. Meter
/s/ Richard Allen Griffin
/s/ Michael J. Talbot