

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDDIE HUGHES,

Defendant-Appellant.

UNPUBLISHED

May 17, 2002

No. 230297

Ingham Circuit Court

LC No. 00-075820-FC

Before: Saad, P.J., and Owens and Cooper, JJ.

PER CURIAM.

A jury convicted defendant of assault with intent to commit great bodily harm less than murder, MCL 750.84. Defendant was sentenced as a fourth-degree habitual offender, MCL 769.12, to 90 to 300 months' imprisonment. Defendant appeals as of right. We affirm.

Defendant contends that the trial court impermissibly limited his cross-examination of the complainant by erroneously applying the rape shield law, MCL 750.520j; thereby, limiting questions regarding an alleged prior sexual assault committed by the complainant against defendant's sister. Defendant claims that this evidence was properly admissible under MRE 404(a)(2) and MRE 404(b) to show complainant's motive to fabricate the allegations because the complainant was the aggressor. Defendant argues that he was denied his right to confrontation and the ability to present testimony favorable to his theory of the case. We disagree.

This appeal arises out of the following colloquy that occurred while defendant, proceeding *in propria* persona, was cross-examining the complainant:

Q. Mr. Peters, is it – is it true that when I entered your house that I wanted to have a conversation with you about making up to you for molesting my sister?

MR. McQUISIC: I'm going to object, Your Honor.

THE COURT: Approach the bench. (bench discussion) The Court strikes the last question and instructs the jury to disregard it.

Defendant later testified that his purpose for going to the complainant's house was to "reconcile" with complainant over an incident that occurred several years ago.

This Court reviews a trial court's decision to admit or deny evidence for an abuse of discretion. *People v Layher*, 464 Mich 756, 761; 631 NW2d 281 (2001). To the extent this decision involves a question of law, our review is de novo. *Id.*

Evidence is logically relevant if it has any tendency to make a fact of consequence more or less probable that it would be without that evidence. MRE 401; *People v VanderVliet*, 444 Mich 52, 60-61; 508 NW2d 144 (1993). All relevant evidence is admissible unless otherwise provided by constitutional and evidentiary rules. MRE 402; *People v Sabin (After Remand)*, 463 Mich 43, 56; 614 NW2d 888 (2000). Evidence of other acts is precluded by MRE 404 when it is used "to prove a person's character to show that the person acted in conformity with [that] character on a particular occasion." *Sabin, supra* at 56. According to *People v Catanzarite*, 211 Mich App 573, 579; 536 NW2d 570 (1995), this rule applies to the other acts of *any* person. Other acts evidence is admissible under MRE 404(b), if: (1) it is offered for a proper purpose; (2) it is relevant; and (3) the probative value is not substantially outweighed by its potential for unfair prejudice. *VanderVliet, supra* at 74; *People v Hawkins*, 245 Mich App 439, 447-448; 628 NW2d 105 (2001).

In this case, the evidence was logically relevant because it supported defendant's theory that he acted in self-defense. MRE 401; *Sabin, supra* at 56-57. Indeed, evidence of the complainant's motive to initiate the attack would make defendant's claim of self-defense more probable than it would be without the evidence. Moreover, under MRE 404(b)(1), motive is a proper purpose for admitting other acts evidence.

Nonetheless, the evidence was properly excluded because the danger of unfair prejudice substantially outweighed its probative value. MRE 403. Unfair prejudice exists when there is a tendency that the evidence will be given undue or preemptive weight by the jury. *People v Mills*, 450 Mich 61, 75-76; 537 NW2d 909 (1995). Assessing probative value against prejudicial effect requires a balancing of several factors, including whether less harmful means were available to prove a fact. *People v Oliphant*, 399 Mich 472, 490; 250 NW2d 443 (1976). Evidence of an alleged sexual assault by complainant against defendant's sister that occurred several years ago was more prejudicial than probative.¹ Moreover, there were less prejudicial means available for defendant to present his theory of self-defense. Indeed, defendant was permitted to testify that he went to complainant's house to reconcile with him and that the complainant took it the wrong way and flew into a rage. There was also testimony presented that the complainant hated defendant. Although defendant's specific line of questioning and phraseology regarding this matter was limited, we conclude that he was able to convey his theory that the complainant was the aggressor. Emphasizing the fact that defendant was trying to forgive complainant for an alleged sexual assault against defendant's younger sister would only serve to inflame the jury and detract its attention from the actual facts of this case.²

¹ We further note that defendant never provided any evidence that the sexual assault actually occurred. *People v Golochowicz*, 413 Mich 298, 309; 319 NW2d 518 (1982).

² We note that MRE 404(a)(2) is inapplicable to this case because it pertains to evidence used to establish the character of an alleged victim of homicide.

To the extent that defendant argues for the first time on appeal that the trial court's ruling violated the Confrontation Clause, US Const, Am VI; Const 1963, art 1, § 20, our review is limited to plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

A trial court's limitation of a defendant's right of cross-examination may implicate the associated right to confrontation. *People v Frazier (After Remand)*, 446 Mich 539, 543; 521 NW2d 291 (1994). However, the right of cross-examination is limited and "neither the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence or cross-examine on any subject." *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). The Confrontation Clause only guarantees a defendant an opportunity for cross-examination, there is no requirement that this examination be successful or effective. *People v Watson*, 245 Mich 572, 584; 629 NW2d 411 (2001); *People v Chavies*, 234 Mich App 274, 283; 593 NW2d 655 (1999).

In the instant case, defendant's legitimate interest in showing the complainant's motive must be balanced against the potential prejudice that would arise from an allegation of past sexual assault that was collateral to the instant action. Because we find there was a danger of unfair prejudice and that defendant was able to present his theory without specifically discussing the alleged sexual assault, we conclude that defendant was not denied his rights to confrontation and due process. Accordingly, defendant has failed to establish plain error. *People v Johnson*, 245 Mich App 243, 261; 631 NW2d 1 (2001).

Affirmed.

/s/ Henry William Saad

/s/ Donald S. Owens

/s/ Jessica R. Cooper