

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRUCE EDWARD BENNETT,

Defendant-Appellant.

UNPUBLISHED

July 12, 2002

No. 230877

Eaton Circuit Court

LC No. 00-020217-FH

Before: Hood, P.J., and Saad and E. M. Thomas*, JJ.

PER CURIAM.

Defendant appeals as of right his convictions of felonious assault, MCL 750.82, and domestic assault, MCL 750.81(2), entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The charges against defendant arose from an allegation that he pointed a knife at his son and threatened to cut him and pushed his daughter during a domestic altercation that occurred when he was intoxicated. Defendant denied that he actually displayed the knife. He stated that he merely threatened to do so after his son struck him. Over defendant's objection the trial court admitted testimony from Scott Whiting, defendant's neighbor, who stated that on a previous occasion he was walking with his son when defendant approached them, displayed a knife, and threatened to cut Whiting like an animal if Whiting's son shined a flashlight on him. The jury found defendant guilty as charged.

Evidence of other crimes, wrongs, or acts is inadmissible to prove the character of a person in order to show that he acted in conformity with it. Such evidence may be admissible to show motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident. MRE 404(b)(1). To be admissible, bad acts evidence must satisfy three requirements: (1) it must be offered for a proper purpose; (2) it must be relevant; and (3) its probative value must not be substantially outweighed by its potential for unfair prejudice. A proper purpose is one other than establishing the defendant's character to show his propensity to commit the offense. *People v Starr*, 457 Mich 490, 496; 577 NW2d 673 (1998). We review a trial court's decision to admit bad acts evidence for an abuse of discretion. *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998).

* Circuit judge, sitting on the Court of Appeals by assignment.

Defendant argues that the trial court abused its discretion by admitting Whiting's testimony regarding his previous display of a knife. We disagree and affirm defendant's convictions. The evidence was offered for a proper purpose, i.e., to show defendant's scheme or plan and intent to put in fear those with whom he is angry by displaying a knife and threatening to eviscerate them. In addition, the evidence was relevant. Evidence is relevant if it is material and has probative value. Evidence is material if it tends to make the existence of any fact that is of consequence to the action more probable or less probable than it would be without the evidence. *Id.*, 388-390.

The charge of felonious assault resulted from defendant's confrontation with his son. The elements of felonious assault are: (1) an assault; (2) with a dangerous weapon; and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). Witnesses testified that defendant displayed a knife and threatened to cut his son. Defendant denied that he engaged in this behavior. The jury was entitled to find that defendant displayed a knife and threatened his son. *People v Warren*, 228 Mich App 336, 343; 578 NW2d 692 (1998), modified 462 Mich 415; 615 NW2d 691 (2000). The testimony from Whiting was relevant to defendant's scheme or plan and intent when displaying the knife during his confrontation with his son.

Furthermore, the probative value of the evidence was not substantially outweighed by the danger of unfair prejudice. MRE 403. The determination of this issue is "best left to a contemporaneous assessment of the presentation, credibility, and effect" of the testimony. *People v Bahoda*, 448 Mich 261, 291; 531 NW2d 659 (1995), quoting *People v VanderVliet*, 444 Mich 52, 81; 508 NW2d 114 (1993), amended 445 Mich 1205; 520 NW2d 338 (1994). The evidence was offered for a proper purpose, and was relevant. The trial court gave a limiting instruction that cautioned the jury against inferring from the evidence that defendant was a bad person who simply acted in accordance with his character. We conclude that given these factors, the prejudicial effect of the evidence did not outweigh its probative value. See *People v Magyar*, ___ Mich App ___, ___ NW2d ___ (Docket No. 224664, pub'd March 12, 2002 at 9:05 a.m.), slip op at 4. The trial court did not abuse its discretion by admitting the bad acts evidence.

Affirmed.

/s/ Harold Hood
/s/ Henry William Saad
/s/ Edward M. Thomas