STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUAN CASIMIR TORREZ,

Defendant-Appellant.

UNPUBLISHED
April 24, 2008

No. 274582
Ogemaw Circuit Court
LC No. 06-002556-FH

Before: Bandstra, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

A jury convicted defendant of first-degree home invasion, MCL 750.110a(2), and the trial court sentenced defendant to five to 20 years' imprisonment. Defendant appeals as of right. We reverse and remand. This case is being decided without oral argument in accordance with MCR 7.214(E).

The prosecutor's theory of the case was that, on December 21, 2005, defendant, along with his son and others, armed with baseball bats and rods or pipes, entered the home of an elderly woman without permission and confronted the lady's grandson. The party injured both grandmother and grandson before leaving upon hearing that the police were coming.

Defendant testified that he had known the young man for a few years, and added that he had gone to the house intending to talk to the grandmother, and was invited inside. Defendant maintained that he and the persons with him were unarmed, but that the young man was holding a bat and soon became belligerent with it. Defendant testified that, in the fracas that ensued, he picked up a shovel and threatened to strike others with it in order to rescue his son from a dangerous predicament.

Defendant challenges his conviction on the grounds that the trial court erred in denying a request for a jury instruction on self-defense, and in precluding evidence that the young man he had confronted had earlier robbed defendant's own son.

I. Self-Defense Instruction

The trial court refused a request to instruct the jury on the affirmative defense of self-defense, explaining as follows:

> [Defendant] is not entitled to the self-defense argument because he denied doing anything wrong. . . . According to his testimony, the only thing he did was go in to talk . . . , entered with permission with a knock, and then the only . . . thing he did wasn't involving the assault.
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> The only thing he did was try to remove his son from the altercation between his son . . . and [the young man at the premises]. So it is my position that, one, I wasn't sure that a self-defense applied to the crime charged. But . . . [the] self-defense request wasn't consistent [with] what his testimony was, what his policy was.

"Questions of law, including questions of the applicability of jury instructions, are reviewed de novo." *People v Perez*, 469 Mich 415, 418; 670 Mich 655 (2003). Instructions must cover each element of each offense charged, along with all material issues, defenses, and theories that have evidentiary support. *People v Daniel*, 207 Mich App 47, 53; 523 NW2d 830 (1994). Conversely, an instruction should not be given that is without evidentiary support. *People v Johnson*, 171 Mich App 801, 804; 430 NW2d 828 (1988).

Defendant points out that an armed assault can satisfy one of the aggravating elements for first-degree home invasion, MCL 750.110a(2)(a), and argues that because he admitted to having threatened to strike persons on the premises with a shovel who were holding and threatening his son, the jury should have had the opportunity to excuse that activity through an instruction on defense of another. We agree.

Although first-degree home invasion is not necessarily an assaultive offense, to the extent that an assault is used to establish an element of the offense, the affirmative defense of self-defense, or defense of another, can negate that element. In this case, the trial court expressly instructed the jury that to find defendant guilty of first-degree home invasion it had to conclude, beyond a reasonable doubt, that defendant committed an assault. The jury had before it various accounts of defendant's engaging in assaultive behavior, but, lacking an instruction on defense of another, the jurors could well have concluded that defendant's own testimony satisfied the assault element, and thus not concerned itself with the other evidence in that regard. We must conclude that this curtailment of defendant's theory of the case was "inconsistent with substantial justice," MCR 2.613(A), and thus that reversal is required.

II. Earlier Robbery

The trial court disallowed testimony concerning allegations that the young man he had confronted had earlier that day robbed his own son. Indications from counsel were that any earlier conflict related to a drug deal that went awry. Defendant argues that the court thus erroneously limited his ability to expose bias on the part of complainant. We disagree.[1]

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[1] Our conclusion that reversal is required because of the instructional issue obviates our need to reach this issue. We do so, however, because it may arise again on retrial.

We review a trial court's evidentiary decisions for an abuse of discretion. *People v Martzke*, 251 Mich App 282, 286; 651 NW2d 490 (2002). An abuse of discretion occurs where the trial court chooses an outcome falling outside a "principled range of outcomes." *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003); *People v Kahley*, 277 Mich App 182, 184; 744 NW2d 194 (2007).

Evidence that tends to show bias on the part of a witness is always relevant, and thus admissible. See *Martzke*, *supra* at 290-292. A jury is entitled to learn "the full context in which disputed events took place." *People v Sholl*, 453 Mich 730, 74; 556 NW2d 851 (1996). However, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." MRE 403.

In this case, the trial court explained its decision not to allow evidence of the alleged earlier altercation as follows:

> [W]e are trying to keep the issue narrowed here. . . . [A]n earlier robbery . . . doesn't allow them to use self help. . . .
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> * * *
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> . . . [W]hat happened, I have no clue. I am not going to go try what happened two and a half hours before, five hours before, two days before or whatever. It has got to be relevant issues, keep the issues narrow.
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> * * *
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> . . . Even if it is . . . tangentially relevant, the probative value is so far, so substantially outweighed by unfair prejudice, confusion of issues, misleading the jury, consideration of undue delay, waste of time, needless presentation. I just can't believe that we are going to sit here in a trial about this . . . .
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> * * *
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> You can certainly call into question inconsistencies but . . . if you bring in the fact that there was supposedly a robbery, she is going to be able to bring in her explanation supposedly that there was a drug buy, there was a pound of marijuana sold and there was four hundred fifty dollars or four hundred dollars cheated out of.
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> That is so far out of the realm of what is reasonable . . . . [T]his issue is narrowly crafted. We have got five attorneys. We are going to keep it on point.
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> . . . [W]e are not going to try whether there was an armed robbery or whether there was a drug deal gone bad. We are going to try whether or not there was a breaking and entering and whether someone was present. I don't care quite frankly whether there is an armed robbery or drug deal gone bad. If they break in

> while someone is present either to collect the money from the armed robbery or collect the money for the drug deal, it is still a breaking and entering. So what their motivation is, it is not like . . . self defense.

We agree with the trial court that, if evidence of an earlier altercation might have brought to light a possible bias on the part at least one prosecution witness,[2] such evidence might have confused the jury concerning which crime was being tried, or improperly caused the jurors to view the sort of violent self-help that the prosecution witnesses would then have described as mitigating criminal responsibility. The trial court's decision to banish that alleged incident entirely for the sake of keeping the trial narrowly focused on the actual charges before the jury did not lie outside a "principled range of outcomes." *Babcock, supra*; *Kahley, supra*. Accordingly, should this issue arise on retrial, the trial court will retain the discretion to limit, or simply bar, evidence of an earlier robbery or drug deal.

Reversed and remanded for further proceedings consistent with this opinion. Jurisdiction is not retained.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Jane E. Markey

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[2] We further note that the evidence in question would have constituted a double-edged sword. If it would have tended to show that especially one prosecution witness had a bias against his visitors at the time in question, it would likewise have undercut the defense theory that defendant and his party came to the home in question with entirely benign intentions, only to endure an assault instigated by the young man at those premises.