

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DAVID ALLEN PALMER,

Defendant-Appellant.

UNPUBLISHED

January 14, 2010

No. 288869

Clinton Circuit Court

LC No. 08-008294-FH

Before: Cavanagh, P.J., and Fitzgerald and Shapiro, JJ.

SHAPIRO, J. (*concurring*).

I concur, but with a somewhat different view on the effective assistance of counsel issue. The majority concludes that defense counsel's stipulation to admit the fact of defendant's prior convictions, in exchange for the prosecutor's agreement not to call the previous stalking victim as a witness, was proper as the prior convictions were admissible under MRE 404(b). I do not think we need to determine the merits of the MRE 404(b) issue, and would instead conclude that the defense attorney's decision to compromise on this issue rather than risk having the trial court allow the prior victim to testify was a reasonable trial tactic which we should not second guess. *People v Odom*, 276 Mich App 407, 415; 740 NW2d 557 (2007). In all other respects, I join with the majority's analysis.

/s/ Douglas B. Shapiro