

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
May 8, 2012

v

WILLIAM JOSEPH EVON,

Defendant-Appellant.

No. 303986
Crawford Circuit Court
LC No. 10-003079-FH

Before: FITZGERALD, P.J., and MURRAY and GLEICHER, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of assault with a dangerous weapon, MCL 750.82, malicious destruction of property valued at less than \$200, MCL 750.377a(1)(d), and domestic violence, MCL 750.81(2). He was sentenced as a third habitual offender, MCL 769.11, to 25 months' to 8 years' imprisonment for the assault conviction, and to 93 days' imprisonment for each of the other two convictions. Defendant appeals as of right. We affirm.

Defendant first argues that other acts evidence of prior domestic violence incidents was unnecessarily cumulative and should have been excluded because its probative value was substantially outweighed by the risk of unfair prejudice to defendant.

We review a trial court's determination as to the admissibility of evidence for an abuse of discretion. *People v Gursky*, 486 Mich 596, 606; 786 NW2d 579 (2010); *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). An abuse of discretion occurs where the result falls outside the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). A preliminary question of law regarding admissibility, however, is subject to de novo review. *Gursky*, 486 Mich at 606; *Lukity*, 460 Mich at 488.

In general, evidence is admissible if it is both relevant and its probative value is not substantially outweighed by the risk of unfair prejudice to the defendant. MRE 402; MRE 403. In cases not involving domestic violence, the prosecution generally may not present evidence of a defendant's other acts, crimes, or wrongs in order to demonstrate the defendant's propensity to commit a crime. MRE 404(b). However, MCL 768.27b addresses admission of other acts or evidence in domestic violence cases, and provides:

[I]n a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other acts of

domestic violence is admissible for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403. [MCL 768.27b(1).]

In *People v Cameron*, 291 Mich App 599, 609-610; 806 NW2d 371 (2011), quoting *People v Pattison*, 276 Mich App 613, 615, 620; 741 NW2d 558 (2007), our Court recognized that this language allowed “relevant evidence of other domestic assaults to prove any issue, even the character of the accused, if the evidence meets the standard of MRE 403” because “a full and complete picture of a defendant’s history . . . tend[s] to shed light on the likelihood that a given crime was committed.” It can be probative of a “propensity to commit acts of violence against women who were or had been romantically involved with . . . [the defendant].” *Id.* at 612.

Domestic violence is defined within the statute as:

- (i) Causing or attempting to cause physical or mental harm to a family or household member.
- (ii) Placing a family or household member in fear of physical or mental harm.
- (iii) Causing or attempting to cause a family or household member to engage in involuntary sexual activity by force, threat of force, or duress.
- (iv) Engaging in activity toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested. [MCL 768.27b(5)(a).]

Included within the statutory definition of “family or household member” are spouses, former spouses, and individuals with whom a person has or has had a dating relationship. MCL 768.27b(5)(b).

Thus, evidence of prior acts of domestic violence may be admitted against a defendant in a domestic violence case unless the probative value of the evidence is substantially outweighed by the risk of unfair prejudice. *Pattison*, 276 Mich App at 615. This does not create a total prohibition on the admission of prejudicial evidence. Rather, such evidence will only be excluded where it is unfairly prejudicial in that “there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury.” *People v Crawford*, 458 Mich 376, 398; 582 NW2d 785 (1998). In *Cameron*, 291 Mich App at 611-612, we held it was not unfairly prejudicial where “the prejudicial effect of other-acts evidence did not stir such passion as to divert the jury from rational consideration of . . . [the defendant’s] guilt or innocence of the charged offenses.”

In *People v Railer*, 288 Mich App 213, 220; 792 NW2d 776 (2010), this Court held that the testimony of two former girlfriends of the defendant regarding prior physical abuse and threats to kill them was admissible because it “was brief and not nearly as graphic or violent as [the] defendant’s transgressions recounted in . . . [the victim’s] testimony.” Further, “[w]hile this evidence was certainly damaging and prejudicial—as is most evidence presented against a criminal defendant—it was by no means inflammatory, nor did it interfere with the jury’s ability to logically weigh the evidence.” *Id.* at 220-221. See also *People v Meissner*, 294 Mich App 438, 452; ___ NW2d ___ (2011), where we held that the testimony of the victim regarding prior

acts of domestic violence during the victim's relationship with the defendant could not be excluded pursuant to MRE 403, as "[t]he prior acts of domestic violence illustrated the nature of [the] defendant's relationship with . . . [the victim] and provided information to assist the jury in assessing . . . [the victim's] credibility."

In the present case, the prosecutor introduced testimony of defendant's ex-wife and a former girlfriend regarding prior acts of domestic violence by defendant. These prior acts included alleged threats, incidents involving property destruction and home invasion, and physical abuse. While defendant avers that the home invasion and property destruction did not constitute domestic violence, these were "activit[ies] toward a family or household member that would cause a reasonable person to feel terrorized, frightened, intimidated, threatened, harassed, or molested" and they therefore qualify as "domestic violence" under the definition in MCL 768.27b(5)(a)(iv). The victim also testified as to her prior relationship with defendant and his pattern of verbally and physically abusive behavior. This testimony was admissible under MCL 768.27b because it involves prior acts of domestic violence against family or household members, who in this case were two former spouses and an ex-girlfriend. Thus, the only potential hurdle to admissibility was MRE 403.

This case is closely analogous to *Railer*, where we held that the probative value of testimony of two of the defendant's former girlfriends regarding past domestic violence was not substantially outweighed by the risk of unfair prejudice to defendant. See 288 Mich App at 220. Here, the testimony showed defendant's volatile character and propensity toward violence in domestic relationships. Although the evidence included two images of injuries inflicted by defendant on his ex-girlfriend that would necessarily be somewhat prejudicial, the evidence was highly probative of his propensity to commit acts of domestic violence.

With regard to the victim's testimony, it was not only probative of defendant's character and propensity to commit violence, but could also be potentially admissible for a non-character purpose; it was evidence of the victim's state of mind, a necessary element in a domestic assault charge. MCL 750.81. Further, before any "other acts" testimony was elicited from any of the three witnesses, the trial judge read a limiting instruction to the jury. Significantly, "[i]t is well established that jurors are presumed to follow their instructions." *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). We find that the trial court's decision to admit the evidence did not fall outside the range of reasonable and principled outcomes, and was not an abuse of discretion.

Defendant next argues that there was insufficient evidence to prove beyond a reasonable doubt that he had destroyed the property at issue. Sufficiency of evidence is a question of law that we review de novo. *People v Chapo*, 283 Mich App 360, 363; 770 NW2d 68 (2009). "In evaluating [the] defendant's claim regarding the sufficiency of the evidence, this Court reviews the evidence in a light most favorable to the prosecutor to determine whether any trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt." *People v Robinson*, 475 Mich 1, 5; 715 NW2d 44 (2006). Therefore, "a reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Further, "[c]ircumstantial evidence and reasonable inferences arising from that evidence can constitute

satisfactory proof of the elements of a crime.” *People v Carines*, 460 Mich 750, 757; 597 NW2d 130 (1999) (quotations and citation omitted).

With respect to the malicious destruction of property conviction, defendant argues that no reasonable jury could have found that he caused property damage to the lawn ornaments or light fixtures because there was no direct testimony that he got out of his vehicle. However, there was significant circumstantial evidence to prove that defendant destroyed the victim’s property. Specifically, defendant arrived at the victim’s home and was outside for an unknown amount of time before banging on the garage door and alerting the victim to his presence. Further, the victim initially retreated into the garage and locked the door after determining that defendant was outside, providing another opportunity for property destruction to occur. When she returned to her house after defendant had left, the victim first noticed the damage to her lawn ornaments, lights, and car. None of the damage had been present prior to defendant’s visit. Considering the evidence in the light most favorable to the prosecutor, there was sufficient circumstantial evidence to prove that defendant destroyed the victim’s property.

Defendant also argues that there was insufficient evidence that he intended to injure or place the victim in fear of an immediate battery so as to sustain his conviction of assault with a dangerous weapon, MCL 750.82. However, the victim testified to the tumultuous and violent past of the relationship, including specific instances of verbal and physical abuse by defendant. Further, there was extensive evidence that defendant’s actions on July 14, 2010, were intended to place the victim in fear of an immediate battery. The victim testified that defendant revved his engine outside of her garage while she was inside, causing her to leave the structure out of fear that defendant would drive through it. He accelerated toward the garage quickly enough to leave skid marks that were still visible when the driveway was later examined by police. Taking the evidence in the light most favorable to the prosecution, we find that there was sufficient evidence to prove that defendant intended to place the victim in fear of an immediate battery.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Christopher M. Murray
/s/ Elizabeth L. Gleicher