STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ARTHUR D. FOSTER,

Defendant-Appellant.

UNPUBLISHED
October 2, 1998

No. 203782
Recorder's Court
LC No. 96-006335

Before: Cavanagh, P.J., and Murphy and White, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of one count of felonious assault, MCL 750.82; MSA 28.277. The trial court sentenced defendant to a term of four years' probation. Defendant appeals as of right. We affirm.

Defendant argues that the trial court abused its discretion in limiting the cross-examination of a witness, Dawn Perry, who was defendant's companion at the time of the incident at issue. Whether a trial court has properly limited cross-examination is reviewed for an abuse of discretion. *People v Minor*, 213 Mich App 682, 684; 541 NW2d 576 (1995).

Defendant contends that the trial court erred in preventing him from presenting complainant Dawn Perry's motivation for bringing charges against him. We agree that a witness' motivation for testifying is always of undeniable relevance, and a defendant is entitled to have the trier of fact consider anything that may have influenced the witness' testimony. See *id.* at 685. However, the record does not show that defendant attempted to introduce evidence that Perry testified in order to avoid child neglect charges.[1] Error may not be predicated upon a ruling that admits or excludes evidence unless a substantial right of the party was affected and a timely objection was made. MRE 103(a)(1); *People v Laidlaw*, 169 Mich App 84, 96; 425 NW2d 738 (1988). In order to preserve an evidentiary issue, the party opposing the trial court's ruling must specify the same ground for objection at trial that it asserts on appeal. See *In re Weiss*, 224 Mich App 37, 39; 568 NW2d 336 (1997). Because

defendant did not make an offer of proof regarding the evidence he now claims was erroneously excluded, see MRE 103(a)(2), we find no error requiring reversal.

Defendant also argues that the trial court abused its discretion in limiting the testimony of defendant's witness, Pattie West, on direct examination. We disagree. Defendant complains on appeal that the trial court did not allow West to testify regarding the defendant's character and the witnesses' reputation for truthfulness. However, the record does not establish that defendant was attempting to elicit character testimony from West. The trial court cut short defense counsel's examination of West because it believed that counsel was trying to get in evidence of other acts, which it had already ruled was inadmissible. Instead of asserting that the evidence went to character rather than similar acts, defense counsel acquiesced in the trial court's decision.[2] This issue is therefore not preserved for appellate review, and we decline to address it. See *Laidlaw*, *supra*; *Weiss*, *supra*.

Defendant also argues that there was insufficient evidence to support his conviction. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992). Circumstantial evidence and reasonable inferences arising therefrom may be sufficient to prove the elements of a crime. *People v McKenzie*, 206 Mich App 425, 428; 522 NW2d 661 (1994).

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 Davis*, 216 Mich App 47, 53; 549 NW2d 1 (1996). Defendant challenges the sufficiency of the evidence with respect to the second element.

Defendant first points out that the trial court did not state that an unheated iron is a dangerous weapon within the meaning of MCL 750.82; MSA 28.277. However, a trial court's findings are sufficient if it appears that the trial court was aware of the issues in the case and correctly applied the law. *People v Smith*, 211 Mich App 233, 235; 535 NW2d 248 (1995). The trial court was not required to make specific findings of fact on each element of the crime. See *People v Wardlaw*, 190 Mich App 318, 320-321; 475 NW2d 387 (1991).

Whether the instrument in question is a dangerous weapon under the circumstances is a question for the trier of fact. *People v Ragland*, 14 Mich App 425, 426; 165 NW2d 639 (1968). The manner in which the instrumentality is used and the nature of the act determine whether the instrumentality is dangerous. *People v Goolsby*, 284 Mich 375, 378; 279 NW 867 (1938); *People v Kay*, 121 Mich App 438, 444; 328 NW2d 424 (1982). We conclude that the trial court's implied finding that the iron, as wielded by defendant, constituted a dangerous weapon is not clearly erroneous. See *People v Gould*, 225 Mich App 79, 88; 570 NW2d 140 (1997).

Defendant next argues that there is no evidence that he used the iron as a weapon. We disagree. Porsche Gunther testified that defendant chased her with the iron. Gunther stated that she thought that defendant was going to hit her, and she was scared. Viewing this evidence in a light most

favorable to the prosecution, the evidence was sufficient to establish that defendant used the iron as a weapon.

Defendant's final argument is that he was denied the right to a speedy trial. Whether a defendant was denied his constitutional right to a speedy trial is a mixed question of fact and law. We review the trial court's factual findings under the clearly erroneous standard, while we review constitutional questions of law de novo. *People v Gilmore*, 222 Mich App 442, 459; 564 NW2d 158 (1997). To determine whether a defendant has been denied his right to a speedy trial, this Court considers (1) the length of the delay, (2) the reason for the delay, (3) the defendant's assertion of the right to a speedy trial, and (4) any prejudice to the defendant. *Id*.

In the instant case, defendant was tried approximately seven months after his arrest on August 2, 1996. Because the delay was less than eighteen months, the burden is on defendant to prove prejudice resulting from the delay. See *People v Daniel*, 207 Mich App 47, 51; 523 NW2d 830 (1994). We conclude that defendant has not sustained his burden. Although defendant speculates that "had [he] been able to effectively communicate with his witnesses he would have been able to inform them of the circumstances of the case," the record is devoid of evidence that defendant was prevented from communicating with his witnesses. Defendant has not established that he was unable to prepare an adequate defense.

Moreover, contrary to defendant's claim in his appellate brief, he did not assert his right to a speedy trial. On October 17, 1996, approximately two and one half months after his arrest, defendant signed a trial contract agreeing to a firm trial date of March 11, 1997. Defendant never requested that the trial date be accelerated.[3] Under the facts of this case, we cannot find that defendant was denied his constitutional right to a speedy trial.

Affirmed.

/s/ Mark J. Cavanagh
/s/ William B. Murphy
/s/ Helene N. White

[1] The transcript of defendant's cross-examination of Perry contains the following passage:

> Q. When you and Mr. Foster lived in the house, he basically took care of your kids monetarily, correct?
>
> A. No.
>
> Q. He worked, didn't he?
>
> A. Yes.
>
> Q. All right. And he provided certain items of furniture in that home?

A. No, he didn't.

Q. The refrigerator he bought?

A. No, he did not.

THE COURT: What? That's not relevant.

THE WITNESS: What does that have to do with this?

THE COURT: Let me do the – it's not relevant, Ms. Barnwell [defense counsel].

MS. BARNWELL: It may go to motive.

THE COURT: No, motive is not relevant. Motive is never relevant whether something was done or not done.

Do you have any further questions?

MS. BARNWELL: Okay.

THE COURT: You're ahead already.

MS. BARNWELL: I have no further questions.

Defense counsel's use of the term "motive" rather than "bias" did not preserve the claim now asserted on appeal that defendant intended to delve into the witness' motive for testifying as she did, as opposed to defendant's motive for his conduct.

[2] The transcript of defendant's direct examination of West contains the following passage:

Q. Okay. Miss West, what do you do for a living?

A. I'm a teacher.

Q. Okay. Do you know Arthur Foster?

A. Yes, I do.

Q. How long have you known him?

A. Approximately 10 years.

Q. All right. And do you know Dawn Perry?

A. Yes.

Q. In August of 1996 did you know them?

A. Yes.

Q. Okay. Have you had the occasion to visit the home that they lived in?

A. Yes, I have.

Q. Okay, and how often did you visit?

[THE PROSECUTOR]: Judge, I'm going to object. At this point none of this is relevant to what happened on July 28th.

THE COURT: Ms. Barnwell?

MS. BARNWELL: Your Honor, I'm just getting to – this is laying a foundation for what I'm going to ask.

THE COURT: Pardon?

MS. BARNWELL: Yes, it is, it's really brief.

THE COURT: What is the purpose? Because the information that she wanted to get in was irrelevant regarding the past acts and all that business, which I certainly kept out, and [it] seems that we are back to the same thing. The only thing that matters is what happened, that one particular incident and who saw it and who didn't see it. So, whatever else went on at other times are [sic] certainly not relevant.

MR. JOHNSON [sic]: Okay, Your Honor.

THE COURT: It's not relevant.

MS. BARNWELL: Okay, Your Honor.

THE COURT: It would have nothing to do with the credibility of the young lady that just testified.

MS. BARNWELL: Okay, Your Honor. I'll cease the questioning.

[3] On January 27, 1997, defendant moved to be released on personal recognizance pursuant to MCR 6.004(C). However, this action is not equivalent to assertion of the right to a speedy trial.