STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHAWN DOUGLAS BRUCK,

Defendant-Appellant.

UNPUBLISHED
October 19, 1999

No. 205927
Monroe Circuit Court
LC No. 97-028122 FH

Before: Gribbs, P.J., and O'Connell and R. B. Burns*, JJ.

PER CURIAM.

Defendant appeals as of right from his bench trial conviction for entering without permission, MCL 750.115; MSA 28.310; felony-firearm, MCL 750.227b; MSA 28.424(2); being a felon in possession of a firearm, MCL 750.224f; MSA 28.421(6); felonious assault, MCL 750.82; MSA 28.277; malicious destruction of a building with the damages exceeding $100, MCL 750.380; MSA 28.612; and malicious destruction of personal property valued in excess of $100, MCL 750.377a; MSA 28.609(1). He was sentenced to two years' imprisonment for the felony firearm conviction, followed by concurrent terms of ninety days for entering without permission; three to five years for being a felon in possession; and four to six years each for felonious assault, malicious destruction of a building, and malicious destruction of personal property. We affirm.

Defendant first argues that the trial court erred in admitting evidence of prior violent acts between defendant and the victim. We disagree. "The admission or exclusion of evidence rests in the sound discretion of the trial judge, and the judge's exercise of discretion will not be overturned on appeal absent a showing of a clear abuse of such discretion." *People v Burgess*, 153 Mich App 715, 722-723; 396 NW2d 814 (1986).

Under MRE 404(b):

> (1) Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be

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

admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity,

> or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case.

"Relevant other acts evidence does not violate Rule 404(b) unless it is offered solely to show the criminal propensity of an individual to establish that he acted in conformity therewith." *People v VanderVliet*, 444 Mich 52, 65; 508 NW2d 114 (1993), modified 445 Mich 1205 (1994). Further, a trial "judge, sitting as factfinder, is presumed to possess an understanding of the law that allows him to understand the difference between admissible and inadmissible evidence or statements of counsel." *In re Forfeiture of $19,250*, 209 Mich App 20, 31; 530 NW2d 759 (1995).

Here, in allowing the bad acts testimony, the trial court expressly stated that the evidence was not being admitted to demonstrate defendant's violent propensities, nor that he acted in conformity therewith. Rather, the evidence was admitted to prove defendant's intent to kill on the original charge of assault with intent to murder, MCL 750.83; MSA 28.278, of which defendant was acquitted. Therefore, because the evidence was offered for a legally relevant purpose, proof of intent, it was admissible. MRE 404(b)(1). There was no abuse of discretion.

Defendant also contends that the trial court's findings of fact regarding the convictions for felonious assault and for being a felon in possession of a firearm were clearly erroneous. We disagree. Findings of fact of a trial court sitting without a jury are reviewed under the clearly erroneous standard. *In re Forfeiture of 19203 Albany*, 210 Mich App 337, 342-343; 532 NW2d 915 (1995). "A finding is clearly erroneous when although there is evidence to support it the reviewing court is left with the definite and firm conviction that a mistake has been made." *Id.* However, the resolution of credibility questions is exclusively within the province of the trier of fact. *People v Lemmon*, 456 Mich 625, 646-647; 576 NW2d 129 (1998).

"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) (quoting *People v Malkowski*, 198 Mich App 610, 614; 499 NW2d 450 (1993)). Here, the victim testified that defendant took a rifle out of the closet, loaded it, pointed it at her head, and told her that he was going to kill her. Defendant denied pointing the gun at the victim, but testified that he intended to kill himself. The trial court's findings of fact were therefore a resolution of credibility disputes, and were not clearly erroneous.

Similarly, in order to convict defendant for being a felon in possession of a firearm, the prosecutor had to prove that defendant possessed a firearm, that he had been convicted of a prior felony, and that less than three years had passed since all fines were paid or any term of probation was completed on the prior conviction. MCL 750.224f; MSA 28.421(6). In this case, a probation officer testified that defendant had been convicted of a prior felony, specifically, malicious destruction of property over $100; and that he had been discharged from probation without improvement in September, 1994. Further, defendant admitted to the prior felony, and to

possessing a gun while he was in the victim's mobile home in October, 1996, less than three years later. Accordingly, the trial court's findings of fact were not clearly erroneous.

Affirmed.

/s/ Roman S. Gribbs
/s/ Peter D. O'Connell
/s/ Robert B. Burns