

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEBRA LYNN KETCHUM CARPENTER,

Defendant-Appellant.

UNPUBLISHED

November 21, 2000

No. 212032

Clinton Circuit Court

LC No. 98-006412-FH

Before: Kelly, P.J., and Markey and Collins, JJ.

KELLY, P.J. (dissenting).

I respectfully dissent. In my opinion, the items removed from the trunk of defendant's car were inadmissible at trial.

The ruling governing the admission of physical evidence requires that a proper foundation be laid, that the articles be identified as those they purport to be and that the articles are shown to be connected with the crime or with the accused. *People v Furman*, 158 Mich App 302, 331; 404 NW2d 246 (1987). "In short, there must be sufficient evidence of (1) the exhibit's identity and (2) its connection to the crime to support its admission at trial." *People v Hence*, 110 Mich App 154, 162; 321 NW2d 191 (1981).

The testimony established that the chains and cuffs were located in the trunk of defendant's car, and nothing more. There was no direct testimony supporting the conclusion that the specific items were used to chain Joey to the bed on October 16, 1997. The detective testified that his opinion that the cuffs in the car were used to restrain Joey on October 16, 1997, was based solely on the photograph taken of the dimly lit basement that revealed handcuffs on the bed. The detective also testified that, besides one short piece of chain with a padlock, he did not observe any of the evidence taken from defendant's car in the basement of the house. None of the witnesses testified that the items taken from defendant's car were used to restrain Joey on October 16, 1997. Although the cuffs seized from the trunk of the car may have matched those exposed in the photographs, the cuffs were not unique.

Evidence that is probative is said to have "logical relevance," while evidence lacking in probative value may be termed "remote" or "speculative." McCormick, Evidence (3d ed), § 185, p 542. The evidence seized from defendant's car had little or no probative value, and its introduction was based on the detective's speculation that the items had been in the basement

bedroom. The prosecution failed to show the logical relevance of the items seized from defendant's car. MRE 104(b). The evidence should not have been admitted. The probative value, if any, of this evidence was substantially outweighed by the danger of unfair prejudice. MRE 403. Because I do not believe that the admission of the evidence was harmless, I would reverse and remand for a new trial.

/s/ Michael J. Kelly