

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TIMOTHY EARL DOTY,

Defendant-Appellant.

UNPUBLISHED

November 27, 2001

No. 224667

Ionia Circuit Court

LC No. 99-011492-FH

Before: Whitbeck, P.J., and Neff and Hoekstra, JJ.

PER CURIAM.

Defendant Timothy Doty appeals as of right his jury conviction for second-degree home invasion.¹ We affirm.

I. Basic Facts And Procedural History

Doty admitted that he broke into the home Robert and Vicki Irish shared while no one was present. He took several pieces of their personal property, including a large television, stereo speakers, compact disks, and a tool box. Also, evidently, he moved a number of items in the home and dumped trash on the floor. At the time, Robert and Vicki Irish were having both personal and financial troubles. In fact, Robert Irish and his daughter had stayed with Doty and his wife for a period after Vicki Irish obtained a personal protection order barring him from their home.

At trial, Doty said that Robert Irish had agreed to pay \$225 each month for rent and meals at his (Doty's) home. Doty claimed that he took the items from the Irish's home because Robert Irish owed him \$1,000 for unpaid rent that had accumulated over the course of several months. Doty also said that he believed that he had a right to take items as payment for the rent and thought that the television he took belonged to Robert Irish. Robert Irish conceded that he had lived with Doty, but claimed that it was only for approximately one week after he moved out of the home he had shared with his wife. He denied owing Doty any money for this stay or telling Doty that he owned the television.

¹ MCL 750.110a.

In order to establish that Robert Irish had stayed at his home for longer than one week, Doty attempted to introduce his telephone bills at trial. Doty's theory was that the bills would demonstrate that Robert Irish had made calls from Doty's telephone over an extended period, suggesting that Robert Irish was in the house for an extended period. Doty's wife was willing to attribute specific calls listed on the bills to Robert Irish. The prosecutor objected to introducing this evidence because it was hearsay and had not been authenticated. The prosecutor was, however, willing to stipulate that Robert Irish owed the Dotys money for unpaid telephone calls. The trial court allowed the defense to lay a foundation for the evidence though the defense contended that the bills were self-authenticating business records. However in doing so, Doty's wife admitted that she was not present when some of the phone calls she claimed Robert Irish made had been placed and, therefore, did not really know who placed the calls. The trial court sustained the prosecutor's objection and the jury subsequently convicted him.

Doty now contends that the trial court erred in excluding the bills from evidence and thereby infringed his constitutional right to present a defense. In this case, he explains, that defense was that he had a claim of right to the property he took from the Irish's home.

II. Standard Of Review

We acknowledge that Doty frames this as a constitutional issue subject to review de novo. However, in actuality, this is a routine evidentiary issue, meriting review for an abuse of the trial court's discretion.²

III. Relevance

MRE 803(6) allows the trial court to admit in evidence records of regularly conducted activity as an exception to the hearsay rule. We have no reason to doubt that telephone bills are compiled in the course of a regularly conducted business activity. With respect to these specific telephone bills, we have no reason to suspect that they were untrustworthy to any degree.

However, even admissible evidence may be excluded if the evidence is not relevant.³ MRE 401 states that "[r]elevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Even though Doty's testimony can be interpreted to mean that he had a good faith belief that Robert Irish owed him money and that he was entitled to take property from the Irish's home to repay that debt, this was not a claim of right defense. A claim of right defense relies on the defendant's good faith belief that he was taking his own property to which he was entitled to exercise possession.⁴ Doty did not assert that he believed that he was removing his own property from the Irish's home. These bills had no potential to make this claim of right defense more or less probable. Thus, even though these bills were generally admissible under MRE 803(6), they were properly excluded because they were not relevant to the proceedings, regardless of Mrs. Doty's personal knowledge of the individual

² See *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000).

³ See MRE 402.

⁴ See *People v Pohl*, 202 Mich App 203, 205; 507 NW2d 819 (1993).

calls at issue and the amount of money Robert Irish actually owed the Dotys. While the trial court did not rely on this reasoning to exclude this evidence, we may affirm a trial court when it reaches the correct result, albeit for an incorrect reason.⁵

Affirmed.

/s/ William C. Whitbeck

/s/ Janet T. Neff

/s/ Joel P. Hoekstra

⁵ See *Glazer v Lamkin*, 201 Mich App 432, 437; 506 NW2d 570 (1993).