STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED December 13, 2005
v	No. 257147 Wayne Circuit Court
DAVID LAURENCE RADLEY, Defendant-Appellant.	LC No. 04-002149-01

Before: White, P.J., and Jansen and Wilder, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions for operating a motor vehicle while under the influence of intoxicating liquor, MCL 257.625, and operating a vehicle with a suspended license, MCL 257.904. He was sentenced, as a third habitual offender, MCL 769.11, to thirty-four months to ten years in prison for the operating a motor vehicle while under the influence conviction and one year in prison for operating a vehicle with a suspended license. We affirm.

Defendant first contends that the trial court abused its discretion in admitting testimony regarding a letter that was never admitted at trial and improperly admitting other bad acts testimony. We disagree.

Defendant argues that the trial court abused its discretion when it admitted evidence of a letter that incriminated defendant without requiring the prosecution produce the letter. During Kelly Pletsch's testimony, the prosecution elicited testimony that defendant sent Pletsch a letter following the incident. The trial court instructed the prosecution to abandon any testimony with regard to the letter if the prosecution was not going to produce the letter. The prosecution complied. Furthermore, independent evidence adduced at trial established that defendant operated the van while intoxicated. He was identified at trial as the driver of the van. In addition, Officer Michael Wells' testimony established that defendant was under the influence of intoxicating liquor at the time of the incident. The parties stipulated that defendant's license was suspended at the time of the incident. In addition, the record does not indicate that the contents of the letter were introduced at trial. For these reasons, the testimony mentioning the letter does not require reversal.

Defendant further contends that the trial court abused its discretion when it improperly admitted "bad act evidence" of "witness tampering." The trial court did not abuse its discretion

when it admitted the testimony. An abuse of discretion exists only if an unprejudiced person considering the facts on which the trial court acted would say that there is no justification or excuse for the trial court's decision. *People v Snider,* 239 Mich App 393, 419; 608 NW2d 502 (2000). A trial court's decision on a close evidentiary question ordinarily cannot be an abuse of discretion. *People v Layher,* 464 Mich 756, 761; 631 NW2d 281 (2001).

Pletsch testified that defendant went to Pletsch's residence after the incident. Defendant was apologetic and told Pletsch he was sorry for subjecting her family to his behavior. He told Pletsch that the incident was the first time that he had been drinking in approximately five years. He also told Pletsch that he had been at a golf tournament earlier in the day and was driving to a local grocery store when he rode up Versailles. Defendant called Pletsch approximately three days after coming to her residence and told her that he was going to court and wanted to know if Pletsch could help him out. Defendant and Pletsch spoke on the telephone three times. Each time defendant asked Pletsch to help him out when she was called to testify. He informed Pletsch that he would be forced to sell his house and his kids may not be able to remain in school if he were put in jail. She informed defendant that she would not lie for him, but that she would not say anything horrible about him when she testified. Suzan Samborski testified that defendant came to Pletsch's residence once while Samborski was there. Defendant also told Pletsch and Samborski that the police never saw him in the van and suggested that it would be helpful if they did not place him in the van on the night of the incident.

Defendant improperly argues that the trial court admitted the testimony from Pletsch and Samborski as other bad acts evidence. MRE 404(b). The record indicates that the trial court properly admitted the evidence as an admission of a party-opponent. MRE 801(d)(2). Hearsay, which is a statement other than one made by the declarant while testifying at the trial or hearing offered to prove the truth of the matter asserted, is inadmissible at trial unless there is a specific exception allowing its introduction. MRE 801; MRE 802; *People v Ivers,* 459 Mich 320, 331; 587 NW2d 10 (1998). MRE 801(d)(2) provides that a statement is not hearsay if it is offered against a party and if the statement is the party's own statement. MRE 801(d)(2); *People v Kowalak,* 215 Mich App 554, 556-557; 546 NW2d 681 (1996).

Defendant told Pletsch he was sorry for subjecting her family to his behavior. He told Pletsch that the incident was the first time that he had been drinking in approximately five years. He also told Pletsch he was driving the van on Versailles. Defendant told Pletsch and Samborski that the police never saw him in the van and suggested that it would be helpful if they did not place him in the van on the night of the incident. Thus, defendant's statements to the women were offered against defendant and were his own statements. MRE 801(d)(2). The statements were not hearsay, and were admissible under MRE 801(d)(2). *Kowalak, supra* at 556-557. In addition, evidence of a defendant's attempt to suppress testimony, influence testimony, or induce perjury is admissible as evidence of consciousness of guilt. *People v Sholl,* 453 Mich 730, 740; 556 NW2d 851 (1996). Therefore, the trial court did not abuse its discretion in admitting defendant's statements to Pletsch and Samborski as evidence.

Lastly, defendant contends that United States Supreme Court decision in *Blakely v Washington,* 542 US 296; 124 S Ct 2531; 159 L Ed 2d 403 (2004), controls and that the sentencing factors relied upon by the trial court during sentencing must be submitted to the jury and proven beyond a reasonable doubt. Although the United States Supreme Court in *Blakely* struck down determinate sentencing schemes as unconstitutional infringements on the role of the

jury as factfinder, the Court expressly stated that indeterminate sentencing schemes were not affected by its holding. *Blakely*, *supra* at 296. Because Michigan employs a constitutional indeterminate sentencing scheme, *Blakely* is not controlling. *People v Claypool*, 470 Mich 715, 730 n 14; 684 NW2d 278 (2004). See also *People v Wilson*, 265 Mich App 386, 399; 695 NW2d 351 (2005). Thus, defendant's contention is without merit.

Affirmed.

/s/ Helene N. White
/s/ Kathleen Jansen
/s/ Kurtis T. Wilder