

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT LEE WEBB

Defendant-Appellant.

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UNPUBLISHED

December 10, 2009

No. 286413

Allegan Circuit Court

LC No. 08-015556-FH

Before: Markey, P.J., and Bandstra and Murray, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of aggravated stalking of his former girlfriend, MCL 750.411i. He was sentenced as an habitual offender, third offense, MCL 769.11, to 20 to 120 months' imprisonment. Defendant appeals by right. We affirm.

Defendant first argues there was insufficient evidence to prove beyond a reasonable doubt he was guilty of aggravated stalking; therefore, the trial court erred when it denied his motion for directed verdict. The standard of review on appeal from a denial of directed verdict in a criminal jury trial is de novo. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). This Court must view all the evidence up to the point the motion was raised in the light most favorable to the prosecutor to determine whether a rational trier of fact could have concluded the essential elements of the crime were proved beyond a reasonable doubt. *Id.* This standard of review is essentially the same as that used when the sufficiency of evidence to support a criminal conviction is challenged. *People v Wolfe*, 440 Mich 508, 515-516 n 6; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992).

Defendant was arrested for violating a personal protection order against the victim, which was served after she suspected him of shattering her bedroom window and the windshield to her van in the early morning hours of December 7 and 8, 2007. In those two days, defendant left three vulgar and crude messages on her cellular telephone. Much attention at trial was focused on whether the victim understood defendant to have stated, "you're dead," in one of those messages. Defendant concedes that he committed the crime of stalking under MCL 750.411h(1)(d), but he contends he did not make a credible threat to the victim, his former girlfriend. Thus, he concludes there was insufficient evidence to sustain the aggravated stalking conviction.

A “credible threat” is defined in MCL 750.411i(1)(b):

“Credible threat” means a threat to kill another individual or a threat to inflict physical injury upon another individual that is made in any manner or in any context that causes the individual hearing or receiving the threat to reasonably fear for his or her safety or the safety of another individual.

Although defendant argues that the victim did not understand him to state “you’re dead,” and therefore could not have perceived him to have made a credible threat to her or her family’s safety, it is for the trier of fact, and not this Court, to determine what inferences, if any, may be drawn from the evidence. *People v Hardiman*, 466 Mich 417, 428; 646 NW2d 158 (2002). In addition to evidence of the events of December 7 and 8, 2007, the victim, her children, and a sheriff’s deputy also testified at trial that defendant physically assaulted the victim multiple times throughout their thirteen month relationship, including choking, punching, throwing objects at her, attempting to run her off the road, slamming her to the ground and cutting her head enough to require hospital treatment, one death threat, and breaking a windshield and window of her car. Therefore, regardless whether the victim initially understood defendant to have stated, “you’re dead,” viewing the evidence in the light most favorable to the prosecution, a reasonable jury could have concluded the cumulative effect of defendant’s violent and abusive past, coupled with the events of December 7 and 8, 2007, including his telephone messages, caused the victim to reasonably fear for her safety, and that defendant’s statement was a credible threat.

Next, defendant argues that the trial court abused its discretion in admitting evidence of other acts of domestic violence under MCL 768.27b and MRE 404(b). We review a trial court’s decision to admit evidence for an abuse of discretion; where the issue also involves a preliminary question of law, review of that issue is de novo. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). Abuse of discretion exists if the trial court’s decision falls outside the principled range of outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

At trial, the prosecutor called as a witness defendant’s former girlfriend of 15 years who testified that defendant physically assaulted her, that he threatened to kill her at least once, and that ultimately he was convicted on two charges related to the abuse. Defendant argues that while MCL 768.27b permits evidence of other acts of domestic violence, this particular testimony is not relevant to any element of aggravated stalking, and constitutes impermissible character evidence under MRE 404(b). The prosecutor argues that MCL 768.27b permits the testimony as evidence of other acts of domestic violence and is relevant to defendant’s character.

MCL 768.27b provides:

(1) Except as provided in subsection (4), in a criminal action in which the defendant is accused of an offense involving domestic violence, evidence of the defendant's commission of other acts of domestic violence is admissible for any purpose for which it is relevant, if it is not otherwise excluded under Michigan rule of evidence 403.

This Court has determined that this statute, like a related statute, MCL 768.27a, represents a “policy decision that, in certain cases, juries should have the opportunity to weigh a defendant’s behavioral history and view the case’s facts in the larger context that the defendant’s

background affords.’” *People v Schultz*, 278 Mich App 776, 779; 754 NW2d 925 (2008), quoting *People v Pattison*, 276 Mich App 613, 620; 741 NW2d 558 (2007). MCL 768.27b, unlike MRE 404(b), permits evidence of other acts of domestic violence specifically for the purpose of showing a defendant’s character or propensity to commit the same act in the current case. Defendant’s prior acts of domestic violence against his former girlfriend are relevant to prove his propensity and character for stalking. See *Pattison*, *supra* at 620. Because the evidence is relevant, it is admissible. MCL 768.27b; *Schultz*, *supra* at 778.

The disputed testimony is still, however, subject to MRE 403, and may be precluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, or if presentation of the evidence could result in undue delay, waste of time, or needless accumulation of evidence. MRE 403; *Pattison*, *supra* at 621. While all relevant evidence is inherently prejudicial, evidence is unfairly prejudicial when there is a tendency that the jury will give it undue or preemptive weight, or when allowing use of the evidence would be inequitable. *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995).

The testimony at issue was short, relevant to defendant’s character, and was not cumulative. Although it portrayed defendant negatively, several other witnesses testified to defendant’s past violence and abuse. Consequently, the testimony did not carry undue or preemptive weight with the jury, and, its admission into evidence was not, by law, inequitable. *Pattison*, *supra* at 620-621. We conclude the trial court’s decision to admit the evidence was within the principled range of outcomes; therefore, it was not an abuse of discretion. *Babcock*, *supra* at 269.

We affirm.

/s/ Jane E. Markey  
/s/ Richard A. Bandstra  
/s/ Christopher M. Murray