

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JUSTIN DOUGLAS SMUTZ,

Defendant-Appellant.

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UNPUBLISHED  
December 16, 2010

No. 294290  
Muskegon Circuit Court  
LC No. 09-057361-FH

Before: MURRAY, P.J., and HOEKSTRA and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of bribing, intimidating, or interfering with a witness, MCL 750.122(7)(a).<sup>1</sup> The trial court sentenced defendant to 22 months to 4 years' imprisonment for the witness intimidation conviction. Because there was sufficient evidence to find defendant guilty beyond a reasonable doubt of the charged crime, we affirm.

Defendant was arrested and subsequently brought to trial for his conduct at a social gathering hosted at the victim's home on December 27, 2008. Defendant and the victim were in a dating relationship and have a child in common. The night of defendant's arrest, he and the victim were arguing and the argument escalated to physical violence, at which point one of the other guests contacted the police. Defendant's post-arrest conduct resulted in the witness intimidation charge and the conviction now being challenged.

On appeal, defendant contends the jury lacked sufficient evidence to support his witness intimidation conviction. Specifically, defendant argues the prosecutor failed to prove he acted with the purpose required by the statute.

A sufficiency of the evidence challenge is reviewed de novo on appeal. *People v McGhee*, 268 Mich App 600, 622; 709 NW2d 595 (2005). The evidence is viewed in a light

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<sup>1</sup> Defendant was also convicted of domestic assault, second offense, contrary to MCL 750.81(2), but does not challenge that conviction on appeal.

most favorable to the prosecution to determine whether a rational jury could find that the elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515-516; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). An actor's intent may be inferred from the facts and circumstances, i.e. circumstantial evidence. *People v Fetterly*, 229 Mich App 511, 517-518; 583 NW2d 199 (1998).

MCL 750.122(1) prohibits offering an item of value to a person involved in an official proceeding for purposes of discouraging the witness from testifying, to influence the testimony, or to encourage the witness to testify falsely. MCL 750.122(1)(a)-(c). Under subsection six of the statute, a person shall not "willfully impede, interfere with, prevent, or obstruct or attempt to willfully impede, interfere with, prevent, or obstruct the ability of a witness to attend, testify, or provide information in or for a present or future official proceeding." MCL 750.122(6). The statute defines official proceeding as "a proceeding heard before a legislative, judicial, administrative, or other governmental agency or official authorized to hear evidence under oath, including a referee, prosecuting attorney, hearing examiner, commissioner, notary, or other person taking testimony or deposition in that proceeding." MCL 750.122(12)(a).

In the instant matter, the evidence at trial established that defendant telephoned the victim twice, and wrote the victim 11 letters while awaiting trial. In the letters, defendant repeatedly communicated to the victim his desire to avoid prison, and his reliance on the victim to assist him in avoiding prison. Defendant frequently provided detailed accounts of the events of December 27, 2008 and instructions to the victim regarding how she should testify and behave. For example, defendant instructed the victim "tell the jury directly that I didn't hold you captive. If you can start crying, tell the jury I'm a good man and I just need help." Defendant also stated, "Please have mercy on my soul. I will do anything. Anything! I didn't mean to hurt anyone, I just lost it. . . I love you and I will be eternally in debt to you. I'll sign my car to you and everything."

The facts enabled a jury to find defendant guilty beyond a reasonable doubt. Subsection one was proven beyond a reasonable doubt because defendant repeatedly directed the victim how to testify at trial and, in multiple letters, told the victim he would sign his car over to her. This easily meets the definition of promising to give something of value to the victim to influence testimony or encourage her to withhold testimony or testify falsely at a legal proceeding. Defendant's correspondence with the victim also constitutes a finding that defendant has "attempt[ed] to willfully impede, interfere with, prevent, or obstruct the ability of a witness to attend, testify, or provide information in or for a present or future official proceeding," MCL 750.122(6), thus also meeting the requirements of subsection six. There was sufficient evidence for a rational jury to find the defendant's intention was to influence or interfere with the victim's testimony at his trial.

While the victim did insist that the defendant's correspondences were simply an attempt to persuade her to tell the truth and that the promise concerning the car title related to defendant's request to secure his own attorney, it is the province of the jury to assess the credibility of the witnesses, and this Court affords deference to the jury's special opportunity to do so. *People v Unger*, 278 Mich App 210, 222; 749 NW2d 272 (2008). By convicting defendant, the jury impliedly found the victim's testimony to not be credible. Construing the

evidence in the light most favorable to the prosecution, there was sufficient evidence to convict defendant as charged. *Wolfe*, 440 Mich at 515-516.

Affirmed.

/s/ Christopher M. Murray

/s/ Joel P. Hoekstra

/s/ Deborah A. Servitto