

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

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PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 171094

LC No. 92-060682-FH

DAVID ALEXANDER BENDERS

Defendant-Appellant.

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Before: Saad, P.J., and Marilyn Kelly and M. I. Matuzak,\* JJ.

SAAD, P.J. (dissenting).

I respectfully dissent. While I agree that needlessly interjecting a defendant's sexual preference to prejudice a jury should be discouraged, I do not agree that showing the closeness of a relationship should be prohibited solely because the relationship is non-traditional. This is particularly true where, as here, the nature of the crime in issue requires the prosecution to show that defendant had a powerful motive to protect or hide a felon.

Whether the relationship between defendant and the protected felon had been heterosexual, bisexual, homosexual or extramarital, is not the point. Rather, it is the closeness of the relationship that transcends friendship, which bears upon defendant's motivation to hide a felon that is at the heart of the matter.

To presume that a jury will convict defendant merely because of the defendant's sexual preference irrespective of other exculpatory evidence, presumes too much and gives insufficient credit to jurors' ability to decide the case on the merits.

To prevent the prosecution from proving the intensity of the relationship which bears closely on the motive to hide a felon, unduly restricts the prosecutor's ability to prove the State's case.

/s/ Henry William Saad

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\* Circuit judge, sitting on the Court of Appeals by assignment.