

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RICHARD STEVEN SCHANER,

Defendant-Appellant.

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UNPUBLISHED

April 28, 2000

No. 216878

Livingston Circuit Court

LC No. 98-010374-FH

Before: Owens, P.J., and Murphy and White, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felonious assault, MCL 750.82; MSA 28.277, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to two years' imprisonment on the felony-firearm conviction and to a consecutive enhanced term of one to fifteen years' imprisonment on the felonious assault conviction, reflecting his status as a fourth habitual offender, MCL 769.12; MSA 28.1084. Defendant appeals as of right. We affirm.

This case arises out of defendant's assault on Michel Harris while the two men were bow hunting. Harris testified that while in the woods, he and defendant's brother argued over who had the right to hunt at that location. Harris testified that when defendant, squirrel hunting with a rifle, intervened in the argument, defendant pointed his gun at Harris. Harris testified that he then heard the gun go off, and that defendant and his brother then turned and walked away. Defendant's brother testified that defendant never pointed his rifle at Harris, and that defendant fired the gun at a squirrel in the opposite direction from Harris, after the brothers walked away from the argument.

Defendant argues that the trial court abused its discretion when it admitted evidence regarding the victim's changed hunting habits. Defendant asserts that the evidence was irrelevant and immaterial. We disagree.

The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). An abuse of discretion is found only if an unprejudiced person, considering the

facts on which the trial court acted, would say there was no justification or excuse for the ruling made or the result was so palpably and grossly violative of fact and logic that it evinces a perversity of will or the exercise of passion or bias. See *People v Echavarria*, 233 Mich App 356, 368; 592 NW2d 737 (1999).

Generally, all relevant evidence is admissible, and irrelevant evidence not admissible. MRE 402; *People v Crawford*, 458 Mich 376, 388; 582 NW2d 785 (1998). MRE 401 provides that evidence is relevant if it has “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.” *Id.* Pursuant to MRE 401, evidence is relevant if two components are present, materiality and probative value. *Id.* Finally, evidence may be excluded, although relevant, if its probative value is substantially outweighed by the danger of unfair prejudice. MRE 403.

To prove felonious assault the prosecutor must establish the following essential elements: (1) an assault, (2) with a dangerous weapon, and (3) with intent to injure or place a victim in reasonable fear or apprehension of an immediate battery. *People v Crook*, 162 Mich App 106, 107; 412 NW2d 661 (1987). In this case, all the elements of felonious assault were in issue because defendant pleaded not guilty. *Crawford, supra* at 389. Furthermore, the credibility of the victim was an issue of utmost importance in this case. *People v Mumford*, 183 Mich App 149, 152; 455 NW2d 51 (1990).

The victim’s testimony regarding how he has changed his hunting habits since the assault was elicited by the prosecutor to show the intensity of the victim’s fear or apprehension of an immediate battery at the time of defendant’s assault. The prosecutor sought to demonstrate that the victim was so fearful of an immediate battery that since the assault he has been afraid to again hunt in the same woods where the assault occurred. The testimony that the victim has changed his hunting habits also renders his testimony about the assault more credible. Additionally, the evidence had de minimus prejudicial effect that cannot be said to have substantially outweighed its probative value. The trial court did not abuse its discretion when it admitted the victim’s testimony regarding his changed hunting habits.

Defendant’s remaining evidentiary challenge likewise fails. The two volunteered and nonresponsive answers of the police witness do not provide a ground to set aside the jury’s verdict. See e.g., *People v Griffin*, 235 Mich App 27, 36-37; 597 NW2d 176 (1999).

Affirmed.

/s/ Donald S. Owens  
/s/ William B. Murphy  
/s/ Helene N. White