

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

PATRICK ANDREW LEFLEUR,

Defendant-Appellant.

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UNPUBLISHED

January 20, 2005

No. 250803

Oakland Circuit Court

LC No. 03-190385-FC

Before: Gage, P.J., and Meter and Hood, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions by a jury of kidnapping, MCL 750.349; mayhem, MCL 750.397; assault with intent to do great bodily harm less than murder, MCL 750.84; assault with a deadly weapon, MCL 750.82; and aggravated stalking, MCL 750.411i. The trial court, applying a third-offense habitual offender enhancement under MCL 769.11, sentenced defendant to 35 to 60 years' imprisonment for kidnapping, 8 1/3 to 20 years' imprisonment for mayhem and for assault with intent to do great bodily harm less than murder, 3 to 8 years' imprisonment for assault, and 4 3/4 to 10 years' imprisonment for aggravated stalking. We affirm.

I. Facts

The victim testified at trial as follows: She began dating defendant in January 2001. She and defendant dated for approximately six weeks, and she then tried to end the relationship because he hit her. Subsequently, defendant began telephoning her thirty or forty times a day and appearing, uninvited, at her place of work. Between March 2001 and before May 31, 2001, defendant broke into her home, grabbed her by the neck, and threw her on the floor. Between February 2001 and before May 31, 2001, defendant often appeared at her home without her consent. He pounded on her windows in the middle of the night. She made some police reports but did not follow through with them because she did not want to get defendant into trouble.

The victim testified that, about five days before May 31, 2001, defendant insisted on going to an amusement park with her and her son. When they returned home, she told defendant to "never come over again." On the morning of May 31, 2001, he appeared at her home, forced his way inside the residence, and shoved her into a door. He told her that the relationship would never be over and that he would not "let [her] go." She left the home for a while, and when she returned about 9:00 or 9:30 p.m., defendant accused her of having an affair with the father of her

child. He then pushed her to the ground and began beating her. He told her that he was going to kill her. He kicked her repeatedly in the head, tried to pull her eyeballs out, and bit part of her ear off, laughing after he did it. Defendant then held her head under bath water. Later, about 3:00 or 4:00 a.m. on June 1, he stated that he was going to “kill [her] in Canada,” and he forced her into her vehicle at knifepoint and began driving.

The victim testified that her vehicle needed fuel. She told defendant that she had some money at her home that he could use to buy fuel. Defendant drove the vehicle back to the victim’s house and went inside the building. The victim then ran to a neighbor’s house, pounded on the door, and screamed for help.

On cross-examination, defense counsel emphasized that the victim had not followed through on police reports against defendant throughout the time that he was interfering with her life. Counsel elicited that the victim had sex with defendant twice after she attempted to end her relationship with him; the victim, however, testified that she had not consented to the sex. Counsel elicited that the victim did not report a rape to any authorities.

A neighbor of the victim testified that, about 4:00 a.m. on June 1, 2001, the victim pounded on her door and screamed for help. The victim’s face was swollen and bloody, and she stated, “He tried to kill me. He bit off my ear.” The neighbor testified that, for the prior five or six months, she had noticed the defendant’s vehicle at the victim’s house around three or four times a week.

Another neighbor testified that she was awake nursing her baby at 2:55 a.m. on June 1, 2001, and heard a commotion outside. She saw the victim’s vehicle leaving the victim’s driveway at that time. Later, about 4:10 a.m., she saw the victim’s vehicle again – this time in the road, running – and she saw defendant’s vehicle leaving.

A doctor testified that he saw the victim on June 1, 2001. He noted that her face was dramatically bruised and that part of her ear was missing. He stated that the victim told him that she had been assaulted and that her assailant had bitten her ear. Another doctor testified that he saw the victim after she sustained her injuries. He stated that, as part of her patient history, she indicated that she had been beaten by her boyfriend for four hours. A third doctor testified that he saw multiple bruises and bite marks, as well as eye trauma, on the victim, and a paramedic testified that he located the victim at her neighbor’s house and found her “injured and just full of blood.” Another paramedic corroborated the testimony of the first paramedic.

A police officer testified that he arrived at the victim’s residence after 4:00 a.m. on June 1. He saw the victim’s vehicle and located a steak knife in the center console. The gas gauge was almost on empty. Another police officer testified about the statements he took from the victim with regard to her assault, and a third police officer testified about seeing “gobs of hair” and “gobs of blood” in the victim’s bathtub.

The defendant called a witness who spoke with the victim during the early morning hours of June 1, 2001. The witness testified that the victim was very traumatized and told her that her

ex-boyfriend, against whom she had a restraining order,<sup>1</sup> had beaten her. Defendant's mother testified, in contrast to testimony by the victim, that defendant took the victim's son bowling at some point after March 15, 2001.

Defendant testified as follows: The victim, throughout the course of their acquaintance, was constantly threatening him with regard to his status as a parolee.<sup>2</sup> At one point, he attempted to get a personal protection order (PPO) against her because "she filed a police report against me and she had made some accusations that were not true, and I decided that I needed to – I was afraid of her." On May 31, 2001, he went to see the victim because he wanted to know what she had said about him in a police report. He remained at her house, arguing, for most of the day. The victim had told him, earlier, that "I could just disappear and it wouldn't matter, and no one would care because I was on parole and I was a prison b\_\_\_h." She had also asked him, earlier, to move with her to Lapeer, and she had planned all along for him to accompany her and her son on the amusement park trip.

Defendant testified that the victim was angry with him for refusing to move with her to Lapeer and for other reasons and that she "came at [him]" with a knife sometime after 1:00 a.m. on June 1, 2001. He hit her and slapped her and "lost it" when she "tried to come at [him]" again with the knife. He hit her between eight or ten times with his fists, then tried to calm her, and subsequently bit her ear after she hit him with an iron.

Defendant stated that he never intended to kill the victim and that he held her in bath water in an attempt to clean her bloody wounds. He stated that he and the victim then got into her vehicle because he was going to take her to a hospital. They later returned to the victim's house to get some money, and he left the scene. He fled the state because he "he didn't believe [he] would have a shot at any justice."

The prosecutor called a rebuttal witness, M.Z., who testified that she became friendly with defendant in February 1996. When she told him she no longer wanted any contact with him, he began telephoning her thirty to fifty times a day. Defendant told her that he was a stalker and threatened to kill her and her loved ones. He also threatened to get a PPO against her on "[m]ore than one occasion." M.Z. testified that she did not contact the police, at first, about defendant's behavior because "he told me of his past criminal record and I didn't want to involve the police." M.Z. stated that defendant "threw me around in Ann Arbor and . . . got violent when I wouldn't have sex with him on three occasions."

The charges of kidnapping, mayhem, assault with a deadly weapon, aggravated stalking, and assault with intent to murder were submitted to the jury. The jury found defendant guilty of kidnapping, mayhem, assault with a deadly weapon, aggravated stalking, and the lesser-included offense of assault with intent to do great bodily harm less than murder.

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<sup>1</sup> Defense counsel had earlier elicited that the victim did not have a restraining order against defendant but had at one point obtained a restraining order against another man.

<sup>2</sup> He testified that he had been on parole for aggravated stalking.

## II. Other-Acts Evidence

On appeal, defendant first argues that the trial court erred in allowing the prosecutor to introduce M.Z.'s rebuttal testimony, which related to other bad acts committed by defendant. The decision whether to admit other-acts 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). Moreover, an evidentiary error does not merit reversal in a criminal case unless, after an examination of all the evidence, it affirmatively appears that it is more probable than not that the error affected the outcome of the case. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Evidence of other crimes, wrongs, or acts is inadmissible to show a defendant's character or propensity to commit a charged crime. MRE 404(b)(1). However, evidence of other bad acts may be admissible if offered to prove "motive, opportunity, intent, preparation, scheme, plan or system in doing an act, knowledge, identity, or absence of mistake or accident . . ." *Id.*; see also *People v Sabin (After Remand)*, 463 Mich 43, 55; 614 NW2d 888 (2000). The trial court must determine whether the evidence is relevant and whether the danger of unfair prejudice substantially outweighs the probative value of the evidence. *Sabin, supra* at 55-56.

The prosecutor sought to introduce M.Z.'s testimony in order to show that defendant employed a pattern in which he

meets a woman, when he is rejected he continuously stalks her, harassing phone calls, showing up at place of her employment, and then when he suspects he's about to get in trouble, he jumps the gun and either contacts a police [officer or] threaten[s] to get personal protection orders against them . . . .

The trial court allowed the admission of the evidence, stating that the purpose for the evidence identified by the prosecutor was to show "defendant's intent and system, or modus operandi." The court additionally stated:

In the instant case, Defendant denies or mischaracterizes the criminal acts, claiming that the complainant was the aggressor or consented to his acts. Therefore, all the elements of the offense are in issue. Thus, the evidence is material. . . . The Court finds that the incidents have a tendency to prove defendant's modus operandi and system. The Court also finds that the . . . prior assaultive incidents have a tendency to prove the defendant acted with specific intent to injure the complainant.

The Court finds that the People have provided [a] proper purpose for the use of the evidence. Moreover, the Court is persuade[d] that the potential for unfair prejudice[], as to deprive the defendant of a fair trial, does not substantially outweigh the relevance of this evidence. A limiting instruction shall be given to the jury . . . .

We find no abuse of discretion. Defendant testified that the victim was the initial aggressor on the day of the beating and that he only bit her ear because she hit him with an iron. He also testified that the victim constantly threatened him with regard to his status as a parolee,

and he testified that he attempted to obtain a PPO against the victim. In light of defendant's testimony, the prosecutor was entitled to try and prove that defendant did *not* in fact act only in response to an initial aggressive act by the victim and that he did not bite the victim's ear only because the victim hit him with an iron. M.Z.'s testimony was relevant to the prosecutor's theory of the case because it tended to prove that defendant had a pattern he used with women: making their acquaintance, telephoning them incessantly when they attempted to end the relationship, becoming violent with them, and threatening to obtain PPOs against them.<sup>3</sup> M.Z.'s testimony tended to show defendant's pattern of harassing women and then "blaming his victims" and helped the prosecutor to prove that defendant did in fact commit the charged crimes.

Defendant argues that M.Z.'s testimony established nothing more than defendant's bad character, but we disagree. Indeed, it established a pattern or system that defendant used with women and helped the prosecutor to establish the elements of the charged crimes. The trial court correctly reached this conclusion and also made a proper weighing of the probative value of the evidence versus the potential for unfair prejudice. Moreover, the trial court gave a limiting instruction to the jury with regard to the other-acts evidence. No abuse of discretion occurred, and defendant was not denied his right to a fair trial.<sup>4</sup>

### III. Prosecutorial Misconduct and Ineffective Assistance of Counsel

Defendant next argues that the prosecutor committed two instances of misconduct requiring reversal. Defendant acknowledges that he did not object below to the alleged misconduct. As noted in *People v McLaughlin*, 258 Mich App 635, 644-645; 627 NW2d 860 (2003):

This Court reviews preserved claims of prosecutorial misconduct case by case, examining the remarks in context to determine whether the defendant received a fair and impartial trial. The propriety of a prosecutor's remarks depends on all the facts of a case. Unpreserved claims of prosecutorial misconduct are reviewed for plain error affecting the defendant's substantial rights. To avoid forfeiture of review of this issue under the plain error rule, the defendant must demonstrate that: (1) an error occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected the defendant's substantial

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<sup>3</sup> Contrary to defendant's suggestion on appeal, the trial court did not strike M.Z.'s testimony that defendant threatened on more than one occasion to obtain a PPO against her.

<sup>4</sup> While the evidence in question might not have been admissible to show modus operandi or an intent to injure, as stated in part by the trial court, the trial court's *additional* reasoning was correct and provided a basis for admitting the evidence. Moreover, we note that we will not reverse a trial court if it reaches the correct result for the wrong reason. See *People v Monaco*, 262 Mich App 596, 608; 686 NW2d 790 (2004). We further note that the prosecutor obtained a ruling at trial that she had good cause for failing to identify, before trial and with specificity, certain of M.Z.'s proposed testimony. Defendant does appear to challenge this ruling by the trial court. To the extent he does challenge it, his briefing is inadequate. See, generally *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

rights. The third factor requires a showing of prejudice, meaning that the error must have affected the outcome of the lower court proceedings. If the defendant satisfies these three requirements, this Court must then exercise discretion in deciding whether to reverse. Reversal is warranted only when the plain, forfeited error resulted in the conviction of an actually innocent defendant, or when an error seriously affected the fairness, integrity, or public reputation of the judicial proceedings. [Citations omitted.]

Defendant additionally argues that his attorney rendered ineffective assistance of counsel in failing to object to the alleged instances of prosecutorial misconduct. As noted in *People v Knapp*, 244 Mich App 361, 385; 624 NW2d 227 (2001), “[t]o establish a claim of ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness and that, but for defense counsel's errors, there was a reasonable probability that the result of the proceeding would have been different.”

Defendant first contends that the prosecutor erred by giving the jurors an improper explanation of the concept of reasonable doubt. The prosecutor stated the following in her rebuttal closing argument: “Beyond a reasonable doubt. You’re all reasonable people. If you think here [sic] he did what we said he did, that’s it, that’s what reasonable doubt is.” Defendant contends that this statement misconstrued the concept of reasonable doubt so badly that jurors may have “interpreted it to justify a guilty verdict if, in their own subjective view, it was more likely than not that [defendant] was guilty.”

No basis for reversal is apparent. Indeed, the court told the jurors, “It is my duty to instruct you on the law. You must take the law as I give it to you. If a lawyer says something different about the law, follow what I say.” The court later stated:

A reasonable doubt is a fair, honest doubt growing out of the evidence or the lack of evidence. It is not merely an imaginary or possible doubt, but a doubt based on reason and common sense. A reasonable doubt is just that, a doubt that is reasonable after a careful and considered examination of the facts and circumstances of this case.

Given that the jurors were properly instructed by the trial court with respect to the definition of “reasonable doubt,” we cannot conclude that any error in the prosecutor’s challenged statement affected the outcome of the proceedings. *McLaughlin, supra* at 645. The prosecutor’s statement did not deny defendant a fair trial. Moreover, defendant’s additional argument on appeal – that his attorney rendered ineffective assistance of counsel by failing to object to the prosecutor’s statement – is without merit. Indeed, defendant has not established that, “but for defense counsel's errors, there was a reasonable probability that the result of the proceeding would have been different.” *Knapp, supra* at 385.

Second, defendant contends that the prosecutor, in her questioning of witnesses and in her arguments, improperly emphasized that defendant had a bad character. Defendant specifically notes the following instances of alleged misconduct: (1) the prosecutor asked a police officer whether defendant mentioned that “he’s got a problem breaking up relationships” and elicited that defendant was “co-dependent” and had trouble ending relationships, (2) the prosecutor asked defendant if he remembered writing a poem in which he referred to himself as a

“psycho,” (3) the prosecutor elicited from M.Z. that defendant had written a poem about himself entitled “Psycho,” and (4) the prosecutor stated that defendant was a “stalker” several times during her closing arguments.<sup>5</sup>

Again, no basis for reversal is apparent. With regard to the questioning of the police officer, not only did defendant fail to object to the questioning, but he testified during direct examination by his attorney that he admitted to the police that he was “co-dependent.” He also testified that he “had problems in the past with relationships.” In light of this cumulative testimony by defendant, which he does not refer to in the course of his appellate argument, the questioning of the police officer by the prosecutor did not affect the outcome of the case, see, generally, *McLaughlin, supra* at 645, and defense counsel was not ineffective for failing to object to the questioning. *Knapp, supra* at 385. With regard to the prosecutor’s characterization of defendant as a “stalker,” we do not consider this to be a plain or obvious error, see *McLaughlin, supra* at 645, because defendant was charged with aggravated stalking based, in part, on having a prior conviction for stalking. See MCL 750.411I(2)(d). His conviction for stalking was entered into evidence, and the prosecutor could argue that defendant was in fact a stalker. Defense counsel was not ineffective in failing to object to the prosecutor’s statements, given that counsel is not required to make a meritless objection. *People v Snider*, 239 Mich App 393, 425; 608 NW2d 502 (2000).

Arguably, the information about defendant’s having referred to himself as a “psycho” was relevant to the aggravated stalking charge, because it helped to explain why defendant would continue to pursue and contact the victim when she no longer wanted to be in a relationship with him. Even assuming, however, that eliciting the information in question amounted to an improper reference to defendant’s character, we nonetheless find no basis for reversal. Indeed, in the context of all the testimony, other evidence, and arguments, we conclude that the few references to defendant’s being a “psycho” did not affect the outcome of the case. *McLaughlin, supra* at 645. The prosecutor’s actions did not deprive defendant of a fair trial. Moreover, defense counsel did not render ineffective assistance by failing to object to the elicitation and use of the information in question. *Knapp, supra* at 385.

Affirmed.

/s/ Hilda R. Gage  
/s/ Patrick M. Meter  
/s/ Karen M. Fort Hood

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<sup>5</sup> Defendant refers to other instances of alleged misconduct but fails to provide the corresponding transcript citations as required by MCR 7.212(C)(7). As noted in *Kelly, supra* at 640-641, “[a]n appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims . . . .”