

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM STEPHEN TOTH,

Defendant-Appellant.

UNPUBLISHED

June 10, 2003

No. 237544

Presque Isle Circuit Court

LC No. 00-091888-FH

Before: Fitzgerald, P.J., and Hoekstra and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of two counts of felonious assault, MCL 750.82, and one count of false impersonation of a police officer, MCL 750.215, arising from an incident involving Wendy Maxwell and her mother, Jeanette Maxwell. He was sentenced to concurrent jail terms of one year for each of the assault convictions and six months for the false impersonation conviction. Defendant appeals as of right. We affirm.

Defendant contends that the trial court erred in excluding relevant impeachment evidence during the cross-examination of complainant Wendy Maxwell. The trial court's ruling on an evidentiary issue is reviewed for an abuse of discretion. *People v Gould*, 225 Mich App 79, 88; 570 NW2d 140 (1997). However, this issue is tied to defendant's constitutional right of confrontation and constitutional errors are reviewed de novo on appeal. *People v Rodriguez*, 251 Mich App 10, 25; 650 NW2d 96 (2002).

Defendant maintains that the trial court improperly precluded any inquiry into evidence of Wendy Maxwell's probationary status for a juvenile adjudication. He contends that this evidence was essential to impeach Wendy's credibility and to show her bias against defendant. Specifically, defendant argues that the evidence would have established that Wendy fabricated her testimony to divert attention from defendant's allegation that she was trespassing and hunting illegally. In excluding the evidence, the trial court noted that the evidence presented established that Wendy was in a hunting blind on her family's property and that no evidence was presented to support a finding that Wendy believed that she was trespassing. Given this evidence, the court concluded that Wendy would have no motive to fabricate her testimony to protect her juvenile probation status and, therefore, the evidence was not relevant.

Generally, evidence of juvenile adjudications is not admissible; however, in a criminal case, the court may allow evidence of a juvenile adjudication of a witness other than the accused

if conviction of the offense would be admissible to attack the credibility of an adult and the court is satisfied that admission is necessary for a fair determination of the case or proceeding. MRE 609(e); see also MRE 403. Upon review of the record, it is apparent that the trial court considered defense counsel's arguments, recognized its discretion, and determined that such was not necessary for the fair determination of the case. We find no abuse of discretion in this ruling, and no prejudice.

This is not a case in which Wendy might have been accused of committing the crime (the assaults) if someone else was not identified. Cf. *Davis v Alaska*, 415 US 308; 39 L Ed 2d 347; 94 S Ct 1105 (1974) (the claim of bias which the defense sought to develop was admissible to afford a basis for an inference of undue pressure because of the witness' status as a probationer, as well as of the witness' possible concern that he might be a suspect in the investigation). Indeed, Wendy was the victim of the crime. Wendy and Jeanette had nothing to gain by calling the police and accusing defendant of a crime. Defendant never established at trial how the Maxwells' alleged trespass would make it any more likely that they would lie about whether defendant pointed a gun at them. The Maxwells believed that they were on their own property (and indeed the evidence established that they were), and Jeanette testified that she thought it was okay to walk on the tracks because the tracks were abandoned. Defendant did not show that the Maxwells had any fear of reprisal for trespassing. Defendant also did not show that Wendy's probationary status put them in any greater fear of reprisal for trespassing than if they were trespassing and Wendy was not on probation. Defendant failed to establish that Wendy's probationary status was "evidence having 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." MRE 401. Thus, trial court did not abuse its discretion by precluding defendant from cross examining Wendy about the juvenile adjudication.

Defendant also argues that the evidence was insufficient to support a finding that defendant assaulted Jeanette Maxwell with a rifle. We disagree.

The elements of felonious assault are: (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery. *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). The intent to place the victim in fear of an immediate battery may be inferred from the circumstances. See *People v Lawton*, 196 Mich App 341; 492 NW2d 810 (1992).

Jeanette Maxwell testified that defendant ordered her out of the deer blind and that when she did not comply defendant stated that he was coming in to get her. Defendant began to yank at the door. Defendant then pointed the barrel of the gun into the deer blind and Jeanette feared that defendant was going to kill her. This testimony was sufficient for a reasonable fact finder to find that the elements of felonious assault were established beyond a reasonable doubt.

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Joel P. Hoekstra
/s/ Peter D. O'Connell