

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

BRIAN TIMOTHY KRAMB,

Defendant-Appellee.

UNPUBLISHED

June 23, 2005

No. 259123

Macomb Circuit Court

LC No. 04-002158-FH

Before: Sawyer, P.J., and Markey and Murray, JJ.

PER CURIAM.

The prosecution appeals by leave granted the trial court's order declaring two letters allegedly written by defendant inadmissible at trial because the letters had not been and could not be properly authenticated. We reverse the trial court to the extent it summarily concluded that the letters were inadmissible without a hearing in circuit court and remand for further proceedings during which the prosecution must be provided an opportunity to properly authenticate the letters allegedly written by defendant as provided for by MRE 901.

The prosecution's only issue on appeal is whether the trial court abused its discretion when, without conducting an evidentiary hearing, it prematurely ruled that letters defendant allegedly wrote would not be admitted into evidence at trial because it found that the letters had not been and could not be properly authenticated. We agree.

We review a trial court's decision whether a proponent has sufficiently authenticated an item for admission into evidence, for an abuse of discretion. *People v Ford*, 262 Mich App 443, 460; 687 NW2d 119 (2004). An abuse of discretion exists if an unprejudiced person would find no justification for the court's ruling. *Id.*

To be authenticated, sufficient evidence must support a finding that the proffered matter "is what its proponent claims." MRE 901(a); *People v Howard*, 226 Mich App 528, 553; 575 NW2d 16 (1997). A document may be authenticated by testimony from a witness with knowledge "that a matter is what it is claimed to be." *Id.*; MRE 901(b)(1). Additionally, a writing may be authenticated on the basis of "[n]onexpert opinion as to the genuineness of handwriting, based upon familiarity not acquired for purposes of litigation." MRE 901(b)(2). Furthermore, authentication "can be satisfied by a comparison by the trier of fact with handwriting specimens which have been authenticated, or by the distinctive characteristics contained in the letter itself, taken in conjunction with other circumstances." *People v Martin*,

150 Mich App 630, 637-638; 389 NW2d 713 (1986), citing MRE 901(b)(3) and (4). The methods of authentication or identification in MRE 901(b) are presented “[b]y way of illustration only, and not by way of limitation.” *People v Berkey*, 437 Mich 40, 50 n 15; 467 NW2d 6 (1991).

In this case, defendant was originally charged with assault with intent to murder, MCL 750.83, and aggravated stalking, MCL 705.411i. A preliminary examination commenced on June 17, 2004 at which the victim testified and the two letters at issue that form the basis of the stalking charge were admitted into evidence. On June 22, 2004, defendant waived his right to a preliminary examination on the aggravated stalking charge in return for the prosecutor moving to dismiss the assault charge. Although the trial court initially denied defendant’s motion to dismiss, it later granted defendant’s motion for clarification. Based on the victim’s testimony at the aborted preliminary exam that she could not identify the handwriting on the letters as that of defendant and an inconclusive Michigan State Police documents examiner’s report, the trial court ruled that “the letters were improperly admitted and are now inadmissible to support a finding that the matter in question is what the proponent claims.”

We agree with the prosecutor that the trial court abused its discretion by suppressing the evidence on the basis of the transcript of the aborted preliminary examination and a police report without allowing the prosecutor an opportunity to lay a foundation for the two letters at or before trial. The prosecutor did not seek to admit the letters here in question to prove the truth of the matters asserted in them. MRE 801(c). Accordingly, it was not necessary for the prosecutor to show that defendant was the author of the letters to establish their admissibility. MRE 801(d)(2). Rather, the letters were alleged to be the instruments of the crime charged, similar to, for example, a note demanding money handed to a teller by a bank robber. The record shows that the victim and her husband had knowledge of and could identify each letter as “what it is claimed to be,” i.e., a threatening letter that was delivered to the victim. MRE 901(b)(1). The letters are, therefore, relevant and admissible without the prosecutor’s having to first show that defendant authored them. Of course, the prosecutor must present sufficient other evidence that when viewed in a light most favorable to the prosecution would permit a rational jury to find beyond a reasonable doubt that defendant caused the letters to be delivered with the intent to threaten, frighten or intimidate the victim, and also prove the other elements of aggravated stalking. But as our Supreme Court observed in *Berkey*, *supra* at 52: “It is axiomatic that proposed evidence need not tell the whole story of a case, nor need it be free of weakness or doubt. It need only meet the minimum requirements for admissibility. Beyond that, our system trusts the finder of fact to sift through the evidence and weigh it properly.”

Furthermore, even if it were necessary for the prosecution to connect defendant to the letters in question as a condition precedent to their admission into evidence, the prosecutor points to other evidence which could be used to authenticate the letters in the manner illustrated by MRE 901(b)(4).¹ The prosecution asserts that letters related to defendant’s February 2004 plea

¹ The “[a]pppearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with [the surrounding] circumstances” can authenticate a letter. MRE 901(b)(4).

to aggravated stalking regarding the victim (pre-assault letters) contain similar handwriting and similar references as the letters allegedly written by defendant in relation to the case at hand (post-assault letters). If the prosecution were permitted to use evidence of the prior acts, it could establish numerous distinctive characteristics in the pre-assault letters that link those letters to defendant.² In turn, this evidence could then link the post-assault letters to defendant as the post-assault letters have the same handwriting and make references similar to the pre-assault letters. Therefore, we conclude that the trial judge also abused her discretion by prematurely suppressing the letters allegedly written by defendant without allowing the prosecution an opportunity to authenticate the letters under MRE 901(b)(4).

We reverse the trial court's order suppressing the evidence and remand for proceedings including an evidentiary hearing and/or trial. We do not retain jurisdiction.

/s/ David H. Sawyer

/s/ Jane E. Markey

/s/ Christopher M. Murray

² The prosecution suggests that it could establish that the pre-assault letters refer to facts that only defendant would know about. For example, within hours of defendant's following the victim to the police department, the victim received a letter stating she should not have gone to the police. Days after going to the police, the victim received another letter stating that the police could not help her. After defendant was arrested and had to wear a tether, the victim received a letter that said, "Your precious department needs a tether to find me but I know where you are all the time without one."