

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DANIEL JOHN PITTAO,

Defendant-Appellee.

UNPUBLISHED

August 10, 1999

No. 213920

Oakland Circuit Court

LC No. 98-DA7024 AR

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

DANIEL JOHN PITTAO,

Defendant-Appellee.

No. 213921

Oakland Circuit Court

LC No. 98-DA7025 AR

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Before: Zahra, P.J., and Saad and Collins, JJ.

SAAD, J. (dissenting).

I respectfully dissent. Though I agree with the majority's view that we should afford a trial court substantial discretion in deciding evidentiary questions, I believe that evidence of defendant's prior abuse of Christopher Pittao (Docket No. 213920) and Tamara Pittao (Docket No. 213921) was clearly admissible, and that the trial court abused its discretion in excluding the evidence.

A. Prior Abuse of Christopher Pittao

In *People v Crawford*, 458 Mich 376; 582 NW2d 785 (1998), our Supreme Court stressed the necessity of showing that the prior bad acts evidence is truly relevant when offered to establish intent and motive: "[T]he proffered evidence truly must be probative of something *other* than the defendant's propensity to commit the crime. "[Prior bad acts] evidence is relevant if two components are present,

materiality and probative value.” *Crawford*, 388. Generally, when the defendant pleads “not guilty”, the evidence of prior bad acts is material to the issues of intent and motive. *Id.*, 388-389. The Court then must consider whether the evidence satisfies the probative force inquiry, which “asks whether the proffered evidence tends ‘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.*, 389-390. To satisfy this test, “the proffered evidence truly must be probative of something *other* than the defendant’s propensity to commit the crime. If the prosecutor fails to weave a logical thread linking the prior act to the ultimate inference, the evidence must be excluded, notwithstanding its logical relevance to character.” *Id.*, 390.

Unlike the majority, I would hold that the evidence of defendant’s prior abuse of Christopher is both material and probative. The evidence is material to the issues of intent and motive, because it demonstrates defendant’s animosity toward his victim. For example, in *People v Hoffman*, 225 Mich App 103, 109-110; 570 NW2d 146 (1997), this Court ruled that evidence that the defendant hated women and had previously acted on that hostility was relevant where defendant was charged with assaulting his girlfriend in an “unprovoked, cruel, and sexually demeaning attack.”

The evidence also passes the “probative force” test. The majority’s focus on the similarity of defendant’s physical acts is too narrow. The commonality among all these incidents that spins the “logical thread” is defendant’s grossly disproportionate response when Christopher annoys or disappoints him. *Crawford*, 394-395. This evidence serves to rebut defendant’s allegation that he merely spanked Christopher on the buttocks with an open hand because it counters the inference that the incident involved only moderate physical discipline.

Accordingly, I would rule that the trial court abused its discretion in excluding evidence of the 1997 incidents when defendant (1) deprived Christopher of food and water for more than five hours because Christopher ate a potato chip and telephoned his mother, and (2) slammed Christopher’s head on concrete because Christopher brought him the wrong can of soda. These incidents evidence a severe overreaction to a child’s peccadilloes and an animosity that belies defendant’s preposterous assertion and defense of parental discipline.

#### B. Prior Abuse of Tamara Pittao

Similarly, with respect to the charges involving Tamara Pittao, evidence of defendant’s previous assaults against her is material and probative because it demonstrates defendant’s animosity toward his wife. In the incident charged, defendant allegedly pushed Tamara into a closet and held her by her wrists while screaming vulgarities and spitting in her face. He then forced her onto a bed and tore the couple’s twenty-two-month-old baby from her hands. Evidence that defendant previously exerted dominance and control over Tamara in 1992 and 1994 rebuts the inference created by defendant’s explanation that the charged offense arose out of an argument over divorce arrangements in which Tamara became violent and defendant had to restrain her.

I agree with the majority's conclusion that the trial court properly excluded evidence of the remaining prior incidents and evidence of Tamara's phone call to Constance Fraser.

/s/ Henry William Saad