

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES ROBERT STEINEBACH,

Defendant-Appellant.

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UNPUBLISHED

August 26, 2003

No. 238914

Grand Traverse Circuit Court

LC No. 01-008514-FH

Before: Hoekstra, P.J., and Sawyer and Zahra, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of malicious destruction of personal property valued at \$1,000 or more but less than \$20,000. MCL 750.377a(1)(b)(i). He was sentenced as a second habitual offender, MCL 769.10, to eighteen months' probation, with the first eight months to be served in the county jail. He now appeals and we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E)(1)(b).

This case arises out of a dispute over an easement access. Defendant owned property on either side of the Boardman River in Grand Traverse County. The property on one side of the river was undeveloped and was accessible only through an easement across the victim's property and that of the victim's neighbor, George DeGrave. The victim, Thomas Gardner, testified that on the weekend in question, he and his wife had gone camping. He had parked his minivan on the back of his lot at the end of the driveway in the vicinity of the easement. In fact, the victim conceded that the van may have intruded into the easement, but that he ensured that there was sufficient room for ingress and egress.<sup>1</sup> Gardner testified that he had parked the van in the same location in the past without interfering with access to the easement.

The van remained parked from Friday evening to Sunday evening, when defendant appeared at the victim's property with a front-end loader. Gardner testified that defendant knocked on his door, but he did not answer because he was afraid of defendant. Defendant then returned to his front-end loader, put the scoop under the van, lifted up the rear of the van and flipped it over, onto its top. Defendant then came at it from the side, rolled it a couple of times

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<sup>1</sup> According to Gardner, the easement was fifty feet wide, half on his property and half on the DeGrave property.

into some trees and defendant's propane tank (which was moved a few inches, but otherwise undamaged). Defendant then left and Gardner summoned the police. The van was a total loss and valued at approximately \$2200. The victim testified that he had no contact with defendant except in 1994 when defendant first purchased the property. The victim was, however, the complaining witness against defendant several years earlier in a wetlands violation case involving defendant's activities on the river.

DeGrave testified that he observed the incident. According to DeGrave, defendant lifted the back of the van up and moved it forward until it flipped over on its roof. Defendant then came at it from the side and rolled it over a few times into the area of the propane tank. DeGrave said that the van was moved or rolled about thirty-five feet. DeGrave also stated that he never observed defendant having trouble accessing the easement.

Deputy Jason Hamilton responded to the call and testified that he made contact with defendant approximately two hours after the incident. Defendant responded to the deputy in a profane manner and was uncooperative in the investigation. Deputy Hamilton was of the opinion that defendant was intoxicated. Defendant did state to the deputy that he had every right to do what he did, which was to move the van, because he owns the easement.

Defendant testified on his own behalf and stated that he first became aware of the van being parked in the easement on Friday evening when he was informed by one of his grandchildren of the situation. Defendant confirmed himself Saturday morning that the van was parked in the easement and was, according to defendant, completely blocking the easement. It was still blocking the easement on Sunday. Defendant's daughter told him Sunday evening that the van was still blocking the easement, so defendant returned to the victim's house, this time driving the front-end loader. Defendant's knock went unanswered, so he proceeded to move the van with the front-end loader. According to defendant, he mistakenly believed that the victim's van was rear-wheel drive so that he could simply pick up the rear of the vehicle and roll it on the front wheels. However, because it was front-wheel drive, the van dug in and then flipped over.

In short, defendant's defense was that he believed that he had an absolute right to use the easement and that his intent was to move the van, not damage it. According to defendant, the damage to the vehicle was an accident, not intentional.

Defendant raises three issues on appeal. Defendant first argues that the trial court erred in denying his requested "claim of right" instruction. Defendant claims that the trial court should have given the following instruction:

(1) To be guilty of malicious destruction of property, a person must intend to damage the property. In this case, there has been some evidence that the defendant damaged the property because he claimed the right to move the property which happened to cause damage. If so, he did not intend to damage.

(2) When does such a claimed right exist? It exists if the defendant took the move [sic] the property honestly believing that he had a legal right to do so. Two things are important: the defendant's belief must be honest, and he must claim a legal right to move the property.

(3) You should notice that the test is whether the defendant honestly believed he had such a right. It does not matter if he was mistaken or should have known otherwise. It also does not matter if the defendant used force/trespassed to move the property.

(4) The defendant does not have to prove he claimed the right to move the property. Instead, the prosecutor must prove beyond a reasonable doubt that the defendant took [sic] the property without a good-faith claimed right to do so.

This instruction is a modified version of CJI2d 7.5, which deals with the “claim of right” defense under larceny.

The trial court declined to give the instruction as requested by defendant, concluding that it overemphasized defendant’s theory of the case. The trial court, however, agreed that an additional instruction was called for and accordingly modified the standard MDOP instruction. Specifically, the fourth paragraph of CJI2d 32.2 provides as follow:

Third, that the defendant did this knowing that it was wrong, [without just cause or excuse,] and with the intent to damage or destroy the property.

The use notes instruct that the language in the brackets is to be given if the evidence supports a defense of just cause or excuse. The trial court modified that portion of the instruction to read as follows:

Third, that the defendant did this knowing that it was wrong. Fourth, that the defendant did this without the honest belief that he had just cause or excuse. And, fifth, that the defendant did this with the intent to damage or destroy the property.

The standard of review for claims of instructional error was recently reviewed by this Court in *People v Milton*, 257 Mich App \_\_; \_\_ NW2d \_\_\_\_ (No. 234080, issued July 8, 2003):

Claims of instructional error are reviewed de novo. *People v Hall*, 249 Mich App 262, 269; 643 NW2d 253 (2002). In reviewing claims of error in jury instructions, we examine the instructions in their entirety. *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001). “Jury instructions must include all the elements of the charged offense and must not exclude material issues, defenses, and theories if the evidence supports them.” *People v Canales*, 243 Mich App 571, 574; 624 NW2d 439 (2000). Even if the instructions are imperfect, there is no error if they fairly presented the issues to be tried and sufficiently protected the defendant’s rights. *Aldrich, supra*.

In the case at bar, not only was the trial court’s instruction adequate, there would be no basis for reversal even if the trial court had merely given the standard instruction as written. We begin by noting that defendant’s testimony at trial did not establish that he believed that he had a right to damage or destroy the minivan because it was blocking the easement. Rather, defendant testified that he honestly believed that he had an absolute right to use the easement for access to

his property and, therefore, a right to move the minivan in order to gain access. Defendant specifically denied that he ever intended to damage the minivan. Rather, according to defendant, the damage was accidental when his attempt to move the minivan did not proceed as planned.

If the jury believed defendant's testimony, that he was only intending to move the property and the damage was accidental rather than intentional, then the jury would have acquitted under either the standard jury instruction or the trial court's modified instruction because the prosecutor would have failed to prove the element of an intent to damage or destroy. Defendant's requested instruction would be necessary only if defendant's guilt could be premised on his moving of the minivan even without causing damage.<sup>2</sup> That is, it is irrelevant to this case whether defendant believed he had a right to move the minivan because he was not charged with "malicious moving of personal property," but with malicious destruction of personal property. Thus, it matters not whether defendant had the right to move the minivan or even whether he honestly believed that he had such a right. Indeed, had events turned out as defendant claims that he intended them to,<sup>3</sup> then there would be no charge of malicious destruction to be brought.

In short, the instructions as given properly focused the jury's attention on whether defendant intended to damage the vehicle and that defendant was guilty only if he intentionally damaged the vehicle without just cause or excuse.

Next, defendant argues that the trial court erred in not allowing him to explore whether Gardner had falsified reports during the course of his employment with Great Lakes Community Mental Health.<sup>4</sup> The trial court sustained the prosecutor's objection, concluding that it was a collateral matter. On appeal, defendant argues that the inquiry was permissible under MRE 608(b) because it was relevant to Gardner's credibility, specifically to Gardner's testimony that the minivan did not block the easement and access to defendant's property, as well as whether the van flipped onto its roof and whether defendant had ever written a note to Gardner to say that access was being blocked when the propane tank was moved.

MRE 608(b) provides as follows:

Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in Rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or

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<sup>2</sup> Even so, we believe that it still would have required some editing as it would still have been slanted too much in defendant's favor.

<sup>3</sup> That is, that he successfully picked up one end of the minivan and safely moved it out of the way without damaging the vehicle.

<sup>4</sup> According to defendant, approximately two months after the trial in this case, Gardner pled guilty to attempt to violate MCL 750.492a(1)(a), which prohibits intentionally placing misleading or inaccurate information in a patient record.

untruthfulness of another witness as to which character the witness being cross-examined has testified.

The decision to admit or exclude evidence is within the trial court's discretion and we will reverse that decision only where the trial court abused its discretion. *People v Katt*, 468 Mich 272, 278; \_\_\_ NW2d \_\_\_ (2003). We are not persuaded that the trial court abused its discretion in the case at bar.

First, as the trial court observed, the issue of the false medical reports was certainly collateral to the case at bar and does little to shed light on whether Gardner would misrepresent the facts in this case. Second, as it appears that there were criminal charges against Gardner as a result of the false medical reports issue, it would seem unlikely that Gardner would have admitted to it had the trial court permitted the question. That is, Gardner would have either denied it or exercised his privilege against self incrimination. For these reasons, we are not persuaded that the trial court erred in preventing defendant from inquiring into the false medical reports issue with Gardner.

Finally, defendant argues that there was insufficient evidence to justify a rational trier of fact from finding defendant guilty because there was insufficient evidence of defendant's intent. We disagree. In reviewing a claim of insufficiency of the evidence, we take the evidence in the light most favorable to the prosecution and determine whether a rational trier of fact would find the defendant guilty beyond a reasonable doubt. *People v Hardiman*, 466 Mich App 417, 421; 646 NW2d 158 (2002). While the jury could certainly have believed defendant's testimony that he was merely trying to remove an obstruction from the easement and did not intend to damage the minivan, it was under no obligation to do so. The jury could have chosen to disbelieve defendant and conclude that defendant intentionally went to Gardner's property with the intent to damage the vehicle. This is especially true in light of the fact that, after the minivan fell from the front-end loader, defendant then engaged it from the side, pushing or rolling it some thirty-five feet according to DeGrave. In short, it was for the jury, not this Court, to determine whether defendant's version of the events was believable. They concluded that defendant's version was not believable and that defendant intentionally flipped or rolled the van. We will not disturb that finding.

Affirmed.

/s/ Joel P. Hoekstra  
/s/ David H. Sawyer  
/s/ Brian K. Zahra