S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRIAN LEE DAVIDSON,

Defendant-Appellant.

UNPUBLISHED
February 15, 2005

No. 251205
Kent Circuit Court
LC No. 02-012538-FC

Before: Smolenski, P.J., and Saad and Bandstra, JJ.

PER CURIAM.

A jury convicted defendant, Brian Lee Davidson, of the particularly vicious and ruthless murder of Jerry Steinberg,[1] one count of unarmed robbery,[2] and two counts of felonious assault, the victims being Megan Shelly and John Marzean.[3] The trial court sentenced defendant to a mandatory term of life in prison for the first-degree murder conviction, 7½ to 15 years in prison for the robbery conviction, and two to four years in prison for each assault conviction. Defendant appeals his convictions and sentences, and we affirm.

I

Defendant argues, erroneously, that the trial court abused its discretion when it admitted a portion of a letter written by defendant, in which he asked his girlfriend to ask a witness against him to lie at trial, and wrote that if she did so, defendant might get a lesser sentence, and thereafter might be able to benefit from a movie deal about his story. The relevant portion of defendant's letter stated, "I bet when my time is up, you can make a book deal out of my life and if I'm lucky, a movie will follow and then I can be rich. That would be sweet." Defendant argues this portion of the letter was irrelevant because it was admitted for the sole purpose of attacking his character.

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[1] MCL 750.316.

[2] MCL 750.530.

[3] MCL 750.82.

We review a trial court's ruling with respect to the admission of evidence for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995). A defendant's attempt to procure perjured testimony may be considered by the jury as evidence of guilt. *People v Lytal*, 119 Mich App 562, 574; 326 NW2d 559 (1982). This evidence is admissible to show 'consciousness of a weak case.' *People v Hooper*, 50 Mich App 186, 199; 212 NW2d 786 (1973). The rationale is that an attempt to fabricate facts or suppress evidence indicates that defendant is conscious that his case is weak or unfounded. *Hooper*, *supra*, citing 2 Wigmore, Evidence (3d ed), § 278, p 120. From this, the jury may infer a lack of truth or merit. *Id.*

Here, the statement was part of a letter defendant wrote to his girlfriend telling her that she needed to convince a witness to lie at trial. He wrote that that was the only way he could get out of prison in 7½ to 10 years. His statement about getting rich by publishing a book was part of his effort to procure perjured testimony, and thus relevant to show defendant's consciousness of guilt.[4]

Accordingly, we hold that the trial court did not err when it admitted defendant's statement.[5]

II

Defendant maintains that the trial court erred when it refused to sever the felonious assault charges from his murder trial. In addition to first-degree murder, defendant was also tried for two counts of felonious assault for attempting to run down two other pedestrians that night with his car. Before trial, the court denied defendant's motion to sever the two counts of

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[4] Defendant also argues that the trial court should have excluded his statement because, given the horrible nature of the crime, it was required to use extra caution to ensure that the jury was not prejudiced against defendant. However, defendant cites no legal authority to support this contention. An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, *People v Leonard*, 224 Mich App 569, 588; 569 NW2d 663 (1997), nor may he give cursory treatment with little or no citation of supporting authority. *People v Kelly*, 231 Mich App 627, 640-641; 588 NW2d 480 (1998).

[5] Were we to hold otherwise, which we do not, we would nevertheless hold that any error was harmless. An error in the admission of evidence is not ground for granting a new trial or setting aside a verdict unless refusal to take this action appears to the court inconsistent with substantial justice. MCR 2.613(A). Here, there was a substantial amount of evidence of defendant's guilt. Defendant admitted to at least three people that he hit the victim with his car, punched the victim, and kicked him. The medical examiner testified that nineteen injuries found on the victim's head and body were consistent with being kicked, stomped on, and hit. Four people testified they saw defendant's car driving around in that neighborhood at the time of the beating. Police found the victim's blood on defendant's shoe and on a napkin taken from his car. Police also found a court notice addressed to the victim in defendant's car as well as a beer bottle at the scene with defendant's fingerprints. Most importantly, defendant's friend testified she was with defendant that night and described defendant's attacks on the victim. In light of all this evidence, the defense has not shown that it was more probable than not that the admission of two sentences of a letter that defendant wrote himself had any effect on the trial's outcome. Therefore, regardless of whether the letter was properly admitted, any effect it had on the trial was harmless.

felonious assault from the murder trial. Defendant now argues that because first-degree murder and felonious assault require proving different levels of intent, they also require separate trials.

We review de novo the issue of whether the joined offenses are related as a matter of law. *People v Abraham*, 256 Mich App 265, 272; 662 NW2d 836 (2003) (finding that two shootings within a couple of hours, in the same neighborhood, and with the same weapon were related as part of a series of connected acts). Though a defendant has a mandatory right to sever unrelated offenses, MCR 6.112(B), if the offenses are related, the judge *may* sever them at his discretion to promote fairness. *People v Tobey*, 401 Mich 141; 257 NW2d 537 (1977). For the purposes of this rule, two offenses are related if they are based on: (1) the same conduct; or (2) a series of connected acts or acts constituting part of a single scheme or plan. *Id.*[6]

Defendant argues the felonious assault charges are unrelated to the first-degree murder charge because each require a different level of intent. However, that is not the proper legal analysis under MCR 6.120(B). To determine whether the felonious assaults of Marzean and Shelly are related to the first-degree murder of Mr. Steinberg, this Court must determine if they were either part of defendant's same conduct or a series of connected acts. Here, both crimes (1) occurred early on the morning of November 17, 2002, within an hour or two, (2) occurred in the same neighborhood, and (3) involve defendant hitting or almost hitting people with his car. Because of these similarities, we hold that the trial court properly concluded that both crimes constitute a series of connected acts, and are therefore related.[7]

The trial court properly ruled that the charges were related and did not abuse its discretion when it denied defendant's motion to sever them.

Affirmed.

/s/ Michael R. Smolenski
/s/ Henry William Saad
/s/ Richard A. Bandstra

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[6] If we find that the trial court properly determined the offenses were related as a matter of law, we then review the trial court's denial of defendant's motion to sever for an abuse of discretion. *Id.*

[7] The felonious assault charges are related to the first-degree murder charge for a second reason. Defendant argued that he hit Steinberg accidentally. Therefore, his deliberate attempts to strike the other pedestrians were relevant to refute that claim.