

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GUY NOLAN PORTES, III,

Defendant-Appellant.

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UNPUBLISHED  
October 26, 1999

No. 203911  
Calhoun Circuit Court  
LC No. 97-000017-FC

Before: Talbot, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

A jury found defendant Guy Nolan Portes, III, guilty as charged of one count of first-degree premeditated murder, MCL 750.316; MSA 28.548, one count of assault with intent to commit murder, MCL 750.83; MSA 28.278, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant was sentenced to life in prison without parole for the murder conviction, thirty to fifty years' incarceration for the assault conviction to run concurrently with the life sentence, and two years' incarceration for each felony-firearm conviction to run consecutively to the other sentences. Defendant appeals by right. We affirm.

I

Defendant first argues that the trial court abused its discretion when it ruled that defendant could not question witness Smith about a Kalamazoo shooting that she allegedly orchestrated<sup>1</sup> against defendant and his accomplice who were on trial for killing Tremaine Watson, the father of her unborn child. We find no abuse of discretion. *People v Howard*, 226 Mich App 528, 542; 575 NW2d 16 (1997).

All relevant evidence, i.e., evidence that has any tendency to make the existence of a material fact more or less probable than it would be without the evidence, is admissible. MRE 401, 402. The trial court may choose to exclude relevant evidence if it determines that the probative value is substantially outweighed by the danger of confusing the issues. MRE 403.

At best, the proposed evidence involved an issue collateral to defendant's guilt or innocence. Defendant argued that the testimony impacted on Smith's credibility. We agree, however, with the trial court that permitting defendant to pursue his line of questioning regarding the shooting would devolve into a determination of Smith's guilt or innocence for the attempted murder of defendant and his accomplice. Accordingly, we find no abuse of discretion.

## II

Defendant also argues that the trial court erred in refusing to grant a one-day continuance for counsel to obtain the presence of two witnesses. We find no abuse of discretion. See *City of Lansing v Hartsuff*, 213 Mich App 338, 350; 539 NW 2d 781 (1995).

Although the failure of certain witnesses to testify may deny a defendant a fair trial when it deprives him of a substantial defense, *People v Hoyt*, 185 Mich App 531, 537-538; 462 NW2d 793 (1990), defendant provided no offer of proof<sup>2</sup> or any evidence to establish that these witnesses' testimony would provide defendant with or contribute to a substantial defense. One subpoenaed witness, who could not appear during defendant's case-in-chief, would have provided cumulative evidence regarding an eyewitness' testimony concerning the witness' interaction with one of the victims after the shooting. The other proposed witness, a defense investigator, apparently would have testified that Tremaine Watson's mother had offered the witness payment to testify. Here, considering the several witnesses who testified for the prosecution and the alleged testimony that these additional witnesses would have provided, we find no abuse of discretion in denying defendant's request for a continuance. Although counsel "assumed" that the trial would go longer than it did and these witnesses were indisposed when she needed them to testify, these facts do not establish that defendant was denied a substantial defense so that denying the adjournment would constitute an abuse of discretion.

## III

Defendant finally asserts that the trial court erred in refusing to instruct the jury on assault with intent to cause great bodily harm less than murder as a lesser included offense of assault with intent to murder. Defendant argues that the evidence showed he was a friend (and relative) of the assault victim, he had no dispute with him and he was distraught because he thought Kelly Blythe was killed by a stray bullet (even though Blythe was still alive). On de novo review, we find that the trial court accurately instructed the jury of the applicable law. *People v Piper*, 223 Mich App 642, 648; 567 NW2d 483 (1997).

The record reveals that Kelly Blythe was sitting in a parked car with the Tremaine Watson when defendant and his accomplice opened fire on the vehicle. The shooters fired forty-eight bullets into the car. Watson was killed and Blythe was, amazingly, only wounded. Given the sheer number of bullets that the shooters fired at the vehicle where the passengers were in close proximity, we find that under no circumstances would it be reasonable to conclude that defendant only had an intent to harm Blythe but not kill him, so an instruction on assault with intent to

commit great bodily harm less than murder should not have been given, and the trial court accurately instructed the jury. *Piper, supra*.

We affirm.

/s/ Michael J. Talbot

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

<sup>1</sup> According to defendant, Smith was buzzed into her cousin Robert Sango's apartment building and was given entrance into Sango's mothers apartment just before unnamed shooters entered the apartment and began firing at Sango and defendant, who fled by jumping off the apartment's balcony.

<sup>2</sup> Defendant asks this Court to remand so he can establish a record. We believe that this request is untimely and unnecessary given the admittedly collateral nature of the testimony.