

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARVIN LAMAAR PARKER, JR.,

Defendant-Appellant.

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UNPUBLISHED

December 28, 2004

No. 250075

Macomb Circuit Court

LC No. 02-004018-FC

Before: Murphy, P.J., White and Kelly, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to the mandatory term of two years' imprisonment. He appeals as of right and we affirm.

Defendant first argues that the trial court improperly admitted Roderick Logan's testimony regarding what he overheard Averis Wilson say in a telephone conversation. Although Logan only heard Wilson's side of the telephone conversation, Wilson discussed accepting money to kill Antwain Hickmon. Defendant asserts this testimony was improperly admitted because it constituted improper bad acts evidence under MRE 404 or, alternatively, should have been excluded as unduly prejudicial under MRE 403. We disagree. Assuming without deciding that this issue was adequately preserved below, we review the admission of this evidence for an abuse of discretion, but review preliminary questions of law connected with the admission of this evidence de novo. *People v McDaniel*, 469 Mich 409, 412; 670 NW2d 659 (2003).

The testimony at issue was not improper on the ground that it was other acts evidence. A jury "is entitled to hear the 'complete story' of the matter in issue." *People v Aldrich*, 246 Mich App 101, 115; 631 NW2d 67 (2001). In this regard, "it is essential that prosecutors and defendants be able to give the jury an intelligible presentation of the full context in which disputed events took place." *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996). Accordingly, evidence of other criminal acts "is admissible when so blended or connected with the crime of which defendant is accused that proof of one incidentally involves the other or explains the circumstances of the crime." *Id.* at 742, quoting *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978), quoting *State v Villavicencio*, 95 Ariz 199, 201; 388 P2d 245 (1964). According to Logan's testimony, he was at the immediate area near Hickmon's apartment at the time that Wilson and defendant approached. Logan's testimony about hearing Wilson having

previously made remarks indicating that he had taken or would take money to kill Hickmon provided a more complete story or fuller context for why Wilson and defendant may have been at the location, i.e., to kill Hickmon, and for Logan's reaction to their presence. Accordingly, this evidence was not precluded as other acts evidence because it was blended or connected with the circumstances of the charged crimes and helped to explain the surrounding circumstances of the incident.

MRE 403 provides that a trial court may exclude relevant evidence if its probative value is substantially outweighed by the danger of unfair prejudice. But the evidence at issue could reasonably be viewed as having significant probative value. Absent the context provided by this evidence of Wilson's involvement in a plan to kill Hickmon, Logan's testimony indicating that Wilson and defendant appeared outside the U-Haul truck and that defendant, who he had known for years, pulled a gun on him might have appeared far more implausible, particularly since Logan acknowledged that he was the first to fire a gun. Thus, the trial court did not abuse its discretion by failing to exclude the evidence at issue as unduly prejudicial under MRE 403. Further, it is clear that any error in the admission of the evidence was harmless in light of the jury's verdict finding defendant not guilty of the assault with intent to murder charge.

Finally, defendant argues that there was insufficient evidence to support his conviction based solely on reasons to question the credibility of incriminating testimony from Logan and another prosecution witness. However, in evaluating the sufficiency of the evidence to support a conviction, we must "make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Thus, we reject defendant's argument in this regard.

Affirmed.

/s/ William B. Murphy  
/s/ Helene N. White  
/s/ Kirsten Frank Kelly