

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DARWAIN STEVEN MCDOWELL,

Defendant-Appellant.

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UNPUBLISHED

November 22, 2005

No. 255813

Wayne Circuit Court

LC No. 03-013960-01

Before: Smolenski, P.J., and Schuette and Borrello, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions of second-degree murder, MCL 750.317, felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b, entered after a bench trial. We affirm.

Defendant was charged with first-degree murder, MCL 750.316, felon in possession of a firearm, and felony-firearm in the shooting death of Brian Smith. Chevonne Knox testified that she saw defendant shoot decedent after defendant and decedent argued over money. Knox gave a statement to the police, and identified defendant as the perpetrator of the shooting. Defendant attempted to introduce evidence via the testimony of decedent's former wife and other witnesses that decedent had a history of engaging in aggressive behavior, and that other persons had a motive to shoot decedent. The trial court excluded such evidence as irrelevant.

The trial court convicted defendant of second-degree murder, felon in possession of a firearm, and felony-firearm. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to concurrent terms of twenty to sixty years and one and one-half to five years for second-degree murder and felon in possession of a firearm, respectively, and to a consecutive two-year term for felony-firearm.

We review a trial court's determination of an evidentiary issue for an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995).

A preserved nonconstitutional error is presumed to be harmless. MCL 769.26. A preserved nonconstitutional error cannot be grounds for reversal of a criminal conviction unless it affirmatively appears that the error was outcome determinative. *People v Whittaker*, 465 Mich 422, 426-427; 635 NW2d 687 (2001).

Defendant argues that the trial court denied him a fair trial and the opportunity to present a defense by excluding evidence that decedent exhibited aggressive behavior and that other persons had a motive to kill decedent. We disagree and affirm defendant's convictions. Defendant did not raise a claim of self-defense; thus, evidence of decedent's character was not admissible under MRE 404(a)(2). See *People v Harris*, 458 Mich 310; 583 NW2d 680 (1998). Furthermore, defendant cites no authority to support his assertion that evidence of a person's actions is admissible under MRE 404(b)(1) to show that those actions motivated another person to act in a certain manner. Moreover, no evidence demonstrated that anyone else in the vicinity at the time decedent was shot possessed a gun or engaged in any action that suggested that he or she might have killed decedent. Therefore, evidence that other persons had reason to dislike decedent because of his aggressive behavior was irrelevant. MRE 401. Defendant has not shown the existence of any error warranting reversal. MCL 769.26.

Affirmed.

/s/ Michael R. Smolenski  
/s/ Bill Schuette  
/s/ Stephen L. Borrello