

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

VAUGHN LEE HILL,

Defendant-Appellant.

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UNPUBLISHED

January 17, 2008

No. 273825

Muskegon Circuit Court

LC No. 05-052634-FC

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

PER CURIAM.

Defendant, Vaughn Lee Hill (also known as Wee Wee), appeals as of right his bench trial convictions of first-degree murder, MCL 750.316, and possession of a firearm during the commission of a felony, MCL 750.227b, under an aiding and abetting theory. We affirm.

Defendant's sole argument on appeal is that the trial court abused its discretion in admitting the victim's statement of present sense impression without corroborating evidence that the underlying event occurred. We review for an abuse of discretion a trial court's decision to admit or exclude evidence. *People v Bauder*, 269 Mich App 174, 179; 712 NW2d 506 (2005). An abuse of discretion is found if the trial court's decision falls outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003).

At trial, three witnesses testified that, immediately before the victim was fatally shot, he commented on the occupants of a black Yukon that drove past. Fatina Harris testified that the victim said "That's Wee Wee [defendant] and them"; Quintina Tippens testified that the victim said "Damn, there go Wee Wee and them"; and Walter Owens testified that the victim said "[t]hat look like Wee Wee."

MRE 801(c) defines "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." MRE 801(a) defines "statement," in part, as "an oral or written assertion." MRE 802 provides that "[h]earsay is not admissible except as provided by these rules." MRE 803 sets out certain circumstances in which hearsay statements are not excluded by the rule against hearsay. MRE 803(1) provides that a present sense impression is "[a] statement describing or explaining an event or condition made while the declarant was perceiving the event or condition, or immediately thereafter." The principle underlying this exception is that the "substantial contemporaneity of event and statement negate the likelihood of deliberate or conscious

misrepresentation.”” *People v Hendrickson*, 459 Mich 229, 235; 586 NW2d 906 (1998), quoting FRE 803(1) advisory committee note.

“Present sense impressions are presumed to be trustworthy because (1) the simultaneous event and description leave no time for reflection, (2) the likelihood for calculated misstatements is minimized, and (3) generally, the statement is made in the presence of another witness who has the opportunity to observe and verify its accuracy.” *Hendrickson*, *supra* at 235. “The admission of hearsay evidence as a present sense impression requires satisfaction of three conditions: (1) the statement must provide an explanation or description of the perceived event, (2) the declarant must personally perceive the event, and (3) the explanation or description must be ‘substantially contemporaneous’ with the event.” *Id.* at 236, quoting *United States v Mitchell*, 145 F3d 572, 576 (CA 3, 1998).

Here, the witnesses testified that, moments before being fatally wounded, the victim stated something to the effect of “there go Wee Wee and them.” The first condition is satisfied because the victim described the perceived event, i.e., defendant (Wee Wee) and his associates were passing by in another vehicle. The second condition is satisfied because the victim personally perceived the event, i.e., the victim was watching the other vehicle pass and indicated it was defendant (Wee Wee) and his associates. The third condition is satisfied because the victim described the perceived event as it was occurring. Defendant does not dispute that the three conditions are satisfied.

However, a majority<sup>1</sup> of our Supreme Court in *Hendrickson* also concluded that, in order for a present sense impression to be admissible, there must also be “corroborating evidence extrinsic to the contents of hearsay statement itself,” i.e., “independent proof, direct or circumstantial, that the underlying event took place.” *Hendrickson*, *supra* at 237-238, 249. Defendant argues that this requirement was not satisfied. The *Hendrickson* Court framed the question as “whether the evidence which may be considered apart from the purported [present sense impression] proves by a preponderance of the evidence that the underlying event occurred.” *Id.* at 238.

Defendant argues that none of the witnesses were able to corroborate whether the victim actually identified him as one of the people in the vehicle passing by, or whether the victim was just identifying the vehicle itself. However, the test is not whether the witnesses testifying to the hearsay statement are able to confirm the victim’s statement of present sense impression. Rather, the test is whether additional evidence proves, by a preponderance of the evidence, that the underlying event (that defendant and his associates passed by in the vehicle) occurred. *Hendrickson*, *supra* at 328. Here, there is sufficient circumstantial evidence that establishes, by a

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<sup>1</sup> Three justices in *Hendrickson*, *supra* at 238-239 (Kelly, J.) concluded that, for a present sense impression to be admissible, there must be independent evidence that the underlying event occurred. Three justices disagreed that corroborative evidence of the underlying event is a prerequisite to the admission of a present sense impression. *Id.* at 240-241 (Boyle, J.). Justice Brickley would have required corroborating evidence not only that the underlying event occurred, but that the statement was made under conditions satisfying the hearsay exception. *Id.* at 250-251 (Brickley, J.).

preponderance of the evidence, the reliability of the victim's statements to Harris, Owens, and Tippens. Evidence established that the victim had been a target of defendant and his gang for several months, and that, when the victim confronted the gang about the attempts on his life, he primarily addressed defendant. Evidence also established that the black Yukon, which belonged to defendant, was following the vehicle in which the victim rode for the entire night. Evidence also established that defendant, codefendant Jason Lotts, and another man followed the victim's group into the club. Once the victim saw the three men, his mood changed, and he became ill at ease. Evidence also established that defendant and his friends left the club seconds after the victim's group did so. When the victim saw defendant's Yukon pass by, he became extremely frightened and made the challenged statement. Because the underlying event precipitating the victim's statement of present sense impression was substantiated by other evidence, the trial court did not abuse its discretion in allowing the hearsay statement into evidence, and it did not err in finding defendant guilty of first-degree murder and felony-firearm under an aiding and abetting theory.

Affirmed.

/s/ Alton T. Davis  
/s/ William B. Murphy  
/s/ Helene N. White