

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HASSAN JAMIL SALAME,

Defendant-Appellant.

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UNPUBLISHED

July 15, 2008

No. 274057

Wayne Circuit Court

LC No. 05-009430-01

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

PER CURIAM.

Defendant appeals as of right his jury trial convictions for assault with intent to do great bodily harm less than murder, MCL 750.84, and conspiracy to commit assault with intent to do great bodily harm less than murder, MCL 750.84; MCL 750.157a. Defendant was sentenced to three years' probation for these convictions. We affirm.

This case arises out of the assault of Mohamad Ajami. At trial, two brothers, Hasan Ali Naser (Hasan) and Husein Ali Naser (Husein), testified that defendant and Hassan Ali Harajli promised to pay them between \$2,000 and \$5,000 in exchange for this assault.<sup>1</sup>

Defendant's first argument on appeal is that the trial court erred when it failed to instruct the jury on his theory of the case and subsequently denied his motion for a new trial on this ground. We disagree. A preserved claim of instructional error is reviewed de novo. *People v Lowery*, 258 Mich App 167, 173; 673 NW2d 107 (2003). This Court reviews the trial court's decision to grant or deny the motion for a new trial for an abuse of discretion. *People v Lemmon*, 456 Mich 625, 648 n 27; 576 NW2d 129 (1998).

At trial, defendant requested that the trial court instruct the jury as follows:

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<sup>1</sup> Harajli was a codefendant in defendant's case. He was tried separately and convicted of assault with intent to do great bodily harm less than murder, and conspiracy to commit assault with intent to do great bodily harm less than murder. The trial court sentenced Harajli to six months' probation.

[I]t's further the defense theory that once the Naser brother[s] realized they were being sought by the police shortly after they assaulted Mr. Ajami, Has[an] [a]nd Husein Naser knowing [defendant] to be a reserve officer with the Wayne County Sheriff's department attempted to phone [defendant] in the hope that [defendant] could extricate them from the consequences of their criminal activities. . . ."

"A criminal defendant has the right to have a properly instructed jury consider the evidence against him . . . . A trial court is required to give a requested instruction, except where the theory is not supported by evidence." *People v Mills*, 450 Mich 61, 80; 537 NW2d 909 (1995), mod 450 Mich 1212 (1995) (citations omitted). "Even if the instructions are somewhat imperfect, reversal is not required as long as they fairly presented the issues to be tried and sufficiently protected the defendant's rights." *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001).

In the case at bar, the jury was aware of defendant's theory that he was not involved in Ajami's assault. During closing arguments, trial counsel argued that the Naser brothers acted independently in attacking Ajami because Husein originally told the police that he assaulted Ajami out of road rage. Consequently, trial counsel claimed that the Naser brothers' testimony was inconsistent and unreliable. Trial counsel also questioned the Naser brothers' testimony because their father befriended Ajami after the assault. Trial counsel argued that there was no recording of the phone calls between Husein and defendant to confirm Husein's testimony that he called defendant to report the assault was complete. Because of the Naser brothers' close relationship with defendant and their knowledge that defendant's brother was a reserve deputy, trial counsel argued that it could be inferred that Husein merely called for assistance when stopped by police. Thus, defendant's theory of the case was before the jury.

In addition, the trial court instructed the jury that it should carefully examine the Naser brother's testimony for reliability. It also instructed the jury that defendant could only be convicted if he actually committed the crimes. The jury is presumed to follow the trial court's instructions. *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998). These instructions implied that, if the jury believed that defendant had no part in the assault and the Naser brothers called him for assistance afterward, he could be acquitted. Therefore, we find that even though the trial court failed to provide the requested instruction, the jury instructions sufficiently protected defendant's rights and the trial court did not abuse its discretion when it denied defendant's motion for a new trial.

Defendant's second claim on appeal is that the trial court erred when it admitted evidence of his motive to assault Ajami. Hasan testified that defendant believed Ajami was responsible for a law enforcement raid on his home and business. Hasan also testified that defendant feared Ajami would have him jailed by alleging he wired money to Hezbollah. Defendant argues that this evidence was unfairly prejudicial in a post-911 world. We disagree. Unpreserved claims of evidentiary error are reviewed for plain error. *People v Carines*, 460 Mich 750, 766-768; 597 NW2d 130 (1999).

Generally, "evidence of other crimes, wrongs, or acts of an individual is inadmissible to prove a propensity to commit such acts." *People v Crawford*, 458 Mich 376, 383; 582 NW2d 785 (1998); MRE 404(b). Such evidence may be admissible, however, for other purposes:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, scheme, plan, or system in doing an act, knowledge, identity, or absence of mistake or accident when the same is material, whether such other crimes, wrongs, or acts are contemporaneous with, or prior or subsequent to the conduct at issue in the case. [*Crawford, supra* at 383, quoting MRE 404(b)(1).]

To be admissible under MRE 404(b)(1), other acts evidence must be (1) offered for a proper purpose, (2) relevant under MRE 402, as enforced through MRE 104(b), (3) the evidence's probative value must not be substantially outweighed by the danger of unfair prejudice, and (4) the trial court, upon request, may provide a limiting instruction. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), amended by 445 Mich 1205 (1994).

Evidence of a raid of defendant's properties and Ajami's allegations that defendant was connected to Hezbollah were admissible to prove motive. To determine if evidence is relevant, a reviewing court must examine: (1) the materiality of the evidence, and (2) "whether the evidence makes a fact of consequence more or less probable than it would be without the evidence." *Mills, supra* at 66-67. A fact is material if "it is within the range of litigated matters in controversy." *People v Brooks*, 453 Mich 511, 518; 557 NW2d 106 (1996) (citation omitted).

Motive was relevant at defendant's trial because it was material to defendant's reason for soliciting the assault. Further, defendant's displeasure with Ajami regarding his role in the raid and allegations made insinuating defendant's connection to Hezbollah made the Naser brother's testimony that defendant hired them to assault Ajami more probable. *Mills, supra* at 66-67.

The probative value of this testimony was not outweighed by its potential prejudice. Unfair prejudice exists when there is a tendency that the evidence will be given undue or preemptive weight by the trier of fact. *People v McGuffey*, 251 Mich App 155, 163; 649 NW2d 801 (2002). While evidence of the raid and alleged connection to Hezbollah may be prejudicial because of this country's climate after the events of 9/11, the record does not establish that it was given preemptive or undue weight. It was offered to show defendant's motive for the assault against Ajami, not to prove that defendant was actually the subject of a raid or a member of Hezbollah. Moreover, the trial court instructed the jury that it should not consider outside influences, such as terrorism, race or national origin in its decision. It also instructed that the jury "must not let sympathy or prejudice influence" its decision. Thus, this evidence cannot be characterized as unfair. *McGuffey, supra* at 163. Consequently, we conclude that the trial court did not err when it admitted the evidence pursuant to MRE 404(b).

Finally, defendant claims that the prosecutor committed misconduct in his direct examination of Hasan by eliciting testimony regarding the raid and defendant's fear that Ajami would connect him to Hezbollah. We disagree. "Because the alleged error was not preserved by a contemporaneous objection and a request for a curative instruction, appellate review is for plain (outcome-determinative) error." *People v Callon*, 256 Mich App 312, 329; 662 NW2d 501 (2003).

"The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial." *People v Rice (On Remand)*, 235 Mich App 429, 434; 597 NW2d 843 (1999). A

prosecutor's good-faith effort to admit evidence does not constitute misconduct. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). The prosecutor may "attempt to introduce evidence that he legitimately believes will be accepted by the court, as long as that attempt does not prejudice the defendant." *Id.* at 662. Because we find that Hasan's testimony was properly admitted under MRE 404(b), the prosecutor's statements do not comprise misconduct. In addition, any prejudice resulting from this evidence was cured by the trial court's instructions to the jury to disregard outside influences. Therefore, the prosecutor's elicitation of testimony regarding Ajami's allegations against defendant to demonstrate motive do not constitute plain error.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot  
/s/ Pat M. Donofrio