

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHRISTOPHER R. JENKINS,

Defendant-Appellant.

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UNPUBLISHED

March 24, 2009

No. 283846

Wayne Circuit Court

LC No. 07-013553-FH

Before: Cavanagh, P.J., and Fort Hood and Davis, JJ.

PER CURIAM.

Defendant appeals by right his jury convictions for felon in possession of a firearm, MCL 750.224f; carrying a concealed weapon, MCL 750.227; and possession of a firearm during the commission of a felony, second offense, MCL 750.227b(1). We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant first argues that the trial court erred in denying his motion in limine to exclude two firearms found at the residence. He asserts that admission of this evidence violated MRE 404b since there was no logical connection between the firearms at issue, the defendant, and the crime charged. We agree.

Evidence is admissible under MRE 404(b)(1) only if (1) it is offered for a proper purpose, i.e., one other than to prove the defendant's character or propensity to commit the act; (2) it is relevant to an issue or fact of consequence at trial; and (3) it is sufficiently probative to outweigh the danger of unfair prejudice. MRE 403; *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). In *People v Orr*, 275 Mich App 587, 589; 739 NW2d 385 (2007), this Court stated that in determining relevance "the trial court must closely scrutinize the logical relationship between the other-acts evidence and the fact at issue." Although the evidence here was ostensibly offered to show the extent of the investigation, a purpose not proscribed by MRE 404(b), it was not relevant to any issue or fact of consequence. There was no logical relevance between these guns and defendant's possession and concealment of the gun actually involved in the crime charged. Moreover, the prosecutor and police officers acknowledged that no such connection existed. Thus, evidence of the additional guns was not relevant to or probative of any fact of consequence.

However, even if preserved, an error in the admission of bad acts evidence does not require reversal unless it affirmatively appears it is more probable than not that the error was

outcome determinative. The defendant bears the burden of establishing that, more probably than not, a miscarriage of justice occurred because of the error. *People v Knapp*, 244 Mich App 361, 378; 624 NW2d 227 (2001). In this case, all three police officials made it clear that defendant had no connection to the other guns that were confiscated. Although the guns were found in the attic where defendant was hiding, the house did not belong to defendant and the guns were not found near defendant. Moreover, an officer chased defendant into the attic, and defendant would not have had time to remove the guns from his person. The evidence also showed that the house was vacant, and that at least one other person was inside the house. Thus, although there was no sound reason for admitting this evidence, there is no indication that it had any bearing on the determination of defendant's guilt regarding the weapon he threw on a bed as he was being pursued. That weapon was the subject of defendant's current convictions.

Defendant next argues that the trial court repeatedly berated and scolded defense counsel in the presence of the jury, and interfered with cross-examination to the extent that it impeded the development of defendant's impeachment defense. Also, defendant asserts that interference and demonstrated bias in favor of the prosecution deprived him of a fair trial. We disagree.

In *People v Cheeks*, 216 Mich App 470; 549 NW2d 584 (1996), this Court stated:

A defendant in a criminal trial is entitled to expect a "neutral and detached magistrate." While a trial court may question witnesses to clarify testimony or elicit additional relevant information, the trial court must exercise caution and restraint to ensure that its questions are not intimidating, argumentative, prejudicial, unfair, or partial. The test is whether the judge's questions and comments may have unjustifiably aroused suspicion in the mind of the jury concerning a witness' credibility and whether partiality quite possibly could have influenced the jury to the detriment of the defendant's case. [*Id.* at 480 (citations omitted).]

We have reviewed the rulings on objections and the trial court's questions and comments that defendant has identified. We conclude that in these exchanges, the trial court was attempting to discern whether points of inquiry were relevant; was trying to focus questions to ensure that the testimony remained relevant; was curbing repetitious questions; was precluding questions that mischaracterized testimony; and was prohibiting questions on redirect examination that went beyond the permissible scope. We find no evidence of bias, and note that defendant was able to establish the points he apparently wanted to make to argue his defense to the jury.

Affirmed.

/s/ Mark J. Cavanagh  
/s/ Karen M. Fort Hood  
/s/ Alton T. Davis