

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLIAM BRIAN HURT,

Defendant-Appellant.

UNPUBLISHED

December 29, 2009

No. 287911

Wayne Circuit Court

LC No. 08-002462-FC

Before: Murphy, C.J., and Jansen and Zahra, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of possession of a firearm during the commission of a felony (felony firearm), MCL 750.227b. He was sentenced to two years' imprisonment. Defendant raises two issues on appeal. In his first issue, defendant claims the trial court improperly excluded testimony from a complaining witness, which resulted in the violation of his due process right to present a defense. In his second issue raised on appeal, defendant argues that the jury rendered an inconsistent verdict when it convicted him of the felony firearm charge while acquitting him of the underlying felony. For the reasons set forth below, we conclude there is no merit to either issue raised by defendant. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. Basic Facts and Procedural History

Defendant was employed as a bouncer, at the Cover Girls bar. Jocelyn Hall testified that she was an exotic dancer also employed at the Cover Girls bar. On January 16, 2008, Hall was having a drink with defendant when Hall saw Peter Campbell and Saif Marzouq enter the bar. Hall hugged Campbell and Marzouq, after which defendant became angry and pulled out a silver gun and placed it against Marzouq's cheek. When Hall told defendant to calm down, defendant grabbed her face and pushed her away. The bar manager advised Hall to leave and, as she prepared to go, she saw defendant holding the gun to Campbell's head. Hall testified that defendant then slammed the gun down onto the bar and stated, "I'll kill you with my bare hands. I don't need a gun." Before she left the bar, Hall observed that Marzouq had a bloody mouth. The following day, Hall accompanied Campbell and Marzouq to the police station to report the incident.

Saif Marzouq testified that he arrived at the bar with Campbell and another man named Eli Jacobs. Marzouq denied that, two days earlier, he had been asked to leave the bar by

defendant. As Marzouq spoke to Hall, he looked up and saw defendant holding a black gun to Campbell's head and stating "I'll kill you. I'll smoke you." Marzouq stepped forward, at which time defendant put the gun to Marzouq's cheek and said the same thing to Marzouq. Defendant then put the gun on the bar and came up to Marzouq saying "I don't need a gun to kill you. I'll kill you with my bare hands." The bar manager took the gun as defendant head-butted Marzouq in the mouth, causing Marzouq to bleed. When defendant eventually went outside, he kept sticking his head inside the bar's door and threatening that Marzouq and Campbell would not make it home. When Campbell and Marzouq left the bar around 2:30 a.m., defendant confronted them. Both Campbell and Marzouq hit defendant, rendering him unconscious. About five minutes later, Marzouq left the parking lot and, the next day, he went to the police.

During Marzouq's cross-examination, the following exchange occurred:

Defense Counsel: And have you ever sold drugs out of the cover girls?

Prosecutor: Objection, your Honor.

The Court: How is that relevant?

Defense Counsel: It's relevant because it goes to the altercation that they had and why they're coming back to the bar and my client throwing them out.

The trial court sustained the objection.

When instructing the jury on the charge of felony firearm, the court said:

To prove this charge, the prosecutor must prove each of the following elements beyond a reasonable doubt; first, that the defendant committed Felonious Assault which has been defined for you. *It is not necessary, however, that the defendant be convicted of that crime.* Second, that at the time the defendant committed the crime, he knowingly carried or possessed a firearm. [Tr VI, pp 92-93 (emphasis added).]

The jury found defendant guilty of felony firearm and not guilty of the four remaining counts of assault with a dangerous weapon against Campbell, assault with a dangerous weapon against Marzouq, assault or assault and battery against Marzouq, and assault or assault and battery against Hall.

II. The Exclusion of Testimony From a Complaining Witness

Defendant argues that the trial court erred when it excluded as irrelevant the testimony of Marzouq, a complaining witness, about whether Marzouq had ever sold drugs at the bar where defendant was employed. To be admissible under MRE 404(b), the evidence of "other crimes, wrongs, or acts" must be offered for a proper purpose, must be relevant, and its probative value must not be substantially outweighed by unfair prejudice. *People v Kahley*, 277 Mich App 182, 184-185; 744 NW2d 194 (2007). MRE 404(b)(1) applies to all "other crimes, wrongs, or acts,"

whether committed by a defendant, a witness, the victim, or some other person. *People v Catanzarite*, 211 Mich App 573, 579; 536 NW2d 570 (1995).

The testimony was presented to provide the context for the altercation and to provide proof of Marzouq's motive and was, therefore, offered for a proper purpose under MRE 404(b). However, the evidence was not relevant under MRE 401. Defendant's defense was predicated on the claim that the Marzouq and his friends falsely accused defendant of assaulting them with a gun and were motivated by bias or bad blood against defendant. In order to present that case, evidence about bias or bad blood was possibly relevant, but the specifics of a crime allegedly committed by Marzouq was irrelevant. The court did allow defendant to question witnesses about prior altercations that occurred between defendant and the various complaining witnesses. In this way, the court allowed evidence to support defendant's claim that Marzouq and others were motivated by bias or bad blood to lie or present fabricated or false testimony. Thus, there was no need for the court to admit irrelevant evidence. Therefore, the trial court did not abuse its discretion when it excluded the testimony.

Defendant also argues that the exclusion of this testimony deprived him of his due process right to present a defense. This argument fails since, as discussed above, defendant was not precluded from telling his side of the story but, rather, was prevented from entering irrelevant testimony into evidence. The exclusion of irrelevant evidence does not infringe on a defendant's right to present a defense. See *People v Unger*, 278 Mich App 210, 250; 749 NW2d 272 (2008). Furthermore, defense counsel's closing argument included the claim that previous activities instigated the altercation.

III. Consistency in the Jury Verdict

Finally, we reject defendant's call to overturn the longstanding precedent in the state of Michigan that a jury in a criminal case may reach an inconsistent verdict in light of its power of leniency. See *People v Torres*, 452 Mich 43, 75; 549 NW2d 540 (1996); *People v Lewis*, 415 Mich 443, 449-452; 330 NW2d 16 (1982).

Affirmed.

/s/ William B. Murphy

/s/ Kathleen Jansen

/s/ Brian K. Zahra