

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARLOS ARZOLA LOPEZ,

Defendant-Appellant.

UNPUBLISHED

January 14, 2000

No. 186092

Bay Circuit Court

LC No. 94-001189-FC

ON REMAND

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Before: McDonald, P.J., and O'Connell and Smolenski, JJ.

PER CURIAM.

In *People v Lopez*, unpublished opinion per curiam of the Court of Appeals, issued April 14, 1998 (Docket No. 186092), we affirmed defendant's convictions of two counts of voluntary manslaughter, MCL 750.321; MSA 28.553, and one count each of carrying a concealed weapon (CCW), MCL 750.227; MSA 28.424, carrying a firearm with unlawful intent, MCL 750.226; MSA 28.423, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; MSA 28.424(2). We held, in part, that the trial court did not abuse its discretion by admitting statements of Jamal White, an unavailable witness, under MRE 804(b)(3). Our Supreme Court has held that the evidence was improperly admitted and has remanded the case to us to determine whether the error was harmless. *People v Lopez*, \_\_\_ Mich \_\_\_; \_\_\_ NW2d \_\_\_ (Docket No. 112093, issued 11/2/99). We affirm in part, reverse in part, and remand for a new trial.

The admission of White's statements under MRE 804(b)(3) implicated defendant's constitutional right of confrontation. US Const, Am VI; *People v Poole*, 444 Mich 151, 162-164; 506 NW2d 505 (1993). Therefore, the admission of that evidence was a constitutional error. A preserved constitutional error requires reversal unless we are able to conclude that the error was harmless beyond a reasonable doubt. *People v Graves*, 458 Mich 476, 482; 581 NW2d 229 (1998). The prosecutor must demonstrate, beyond a reasonable doubt, that there is no reasonable possibility that the erroneously admitted evidence might have contributed to the conviction. *People v Anderson (After Remand)*, 446 Mich 392, 406; 521 NW2d 538 (1994).

In this case, the erroneously admitted statement concerned defendant's state of mind before the shooting and was offered to demonstrate premeditation and to refute defendant's self-defense theory.

Although the jury did not convict defendant of premeditated murder, it did reject his self-defense theory, convicting him of voluntary manslaughter. Moreover, during jury deliberations, the trial court granted the jury's request to review White's statements. The record directly indicates "that the jury was specifically concerned with the erroneously admitted evidence." *People v Watkins*, 438 Mich 627, 667; 475 NW2d 727 (1991) (Cavanagh, C.J.). Under these circumstances, we cannot conclude beyond a reasonable doubt that White's statements did not contribute to defendant's convictions of voluntary manslaughter. *Id.*

Additionally, we conclude that defendant's convictions for carrying a firearm with unlawful intent and felony-firearm were affected by this error, and we reverse those convictions, as well. However, we affirm defendant's convictions and sentences for CCW and felon in possession of a firearm, MCL 750.224f; MSA 28.421(6). We conclude beyond a reasonable doubt that the evidence did not contribute to defendant's CCW conviction because that conviction did not require proof of intent or state of mind and was not predicated on an underlying felony. Also, defendant pleaded guilty to felon in possession of a firearm. Therefore, those two convictions and sentences are affirmed.

Affirmed in part, reversed in part, and remanded for a new trial. We do not retain jurisdiction.

/s/ Gary R. McDonald

/s/ Peter D. O'Connell

/s/ Michael R. Smolenski