

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
August 13, 2013

v

LEON TALBERT COTTRELL,

Defendant-Appellant.

No. 306952
Wayne Circuit Court
LC No. 11-002576-FC

Before: BOONSTRA, P.J., and SAWYER and MURRAY, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree murder, MCL 750.316; three counts of assault with the intent to murder, MCL 750.83; and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant appeals as of right. We affirm.

I. BASIC FACTS AND PROCEDURE

On December 1, 2010, defendant was at a club in Detroit. He got into a verbal altercation with a friend of the victim, Ryan Stokes. The altercation escalated and led to Stokes and his friends being removed from the club. Afterward, Stokes's group went to a friend's house, and Carter Madlock, a mutual friend of Stokes and defendant, subsequently arrived in a car with others. Testimony revealed that Stokes approached the car and flashed his gun. Shortly thereafter, shots were fired. After driving away, Madlock called Stokes to discuss the shooting and defendant was overheard in the background of the conversation saying, "somebody shot at us, they gotta [sic] die." Madlock informed Stokes that the voice in the background was "H.P. Leon," a common nickname for defendant. Madlock said that defendant was angry and coming to get Stokes and his friends. On December 19, 2010, Stokes and Antwan Etheridge, along with two of their friends, were walking to their car from a club in Detroit when defendant opened fire on them, shooting Etheridge in the back and Stokes in the chest, killing Stokes. Defendant claimed that he was not the one who shot at Stokes and his friends.

On appeal, defendant argues that evidence surrounding the events on December 1, 2010, was improperly admitted "other acts" evidence under MRE 404(b). We disagree.

II. STANDARD OF REVIEW

Typically, issues concerning the admission of evidence are reviewed for an abuse of discretion. *People v Johnson*, 474 Mich 96, 99; 712 NW2d 703 (2006). As defendant failed to timely object at trial, the issue is unpreserved for appeal. *People v Coy*, 243 Mich App 283, 286-287; 620 NW2d 888 (2000). Issues unpreserved at trial, however, are reviewed for plain error, which requires that “(1) error must have occurred, (2) the error was plain, i.e., clear or obvious, (3) and the plain error affected substantial rights.” *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

III. DISCUSSION

MRE 404(b) states:

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, plan, knowledge, identity, or absence of mistake or accident.

“At its essence, MRE 404(b) is a rule of inclusion, allowing relevant other acts evidence as long as it is not being admitted solely to demonstrate criminal propensity.” *People v Martzke*, 251 Mich App 282, 289; 651 NW2d 490 (2002). The Michigan Supreme Court laid out the process for considering other acts evidence under MRE 404(b):

First, the prosecutor must offer the other acts evidence under something other than a character to conduct or propensity theory. MRE 404(b). Second, the evidence must be relevant under MRE 402, as enforced through MRE 104(b), to an issue of fact of consequence at trial. Third, under MRE 403, a determination must be made whether the danger of undue prejudice [substantially] outweighs the probative value of the evidence in view of the availability of other means of proof and other facts appropriate for making decision of this kind under Rule 403. [*People v Sabin (After Remand)*, 463 Mich 43, 55-56; 614 NW2d 888 (2000) (citation omitted).]

We conclude, however, before considering admissibility under MRE 404(b), that defendant’s argument is fatally flawed. The evidence’s admissibility is not governed by MRE 404(b). Evidence of acts that explain the circumstances of the charged crime are not confined to admission under MRE 404(b). *People v Malone*, 287 Mich App 648, 661; 792 NW2d 7 (2010). Further, “it is essential that prosecutors and defendants be able to give the jury an intelligible presentation of the full context in which disputed events took place.” *People v Sholl*, 453 Mich 730, 741; 556 NW2d 851 (1996). “It is the nature of things that an event often does not occur singly and independently, isolated from all others, but, instead, is connected with some antecedent event from which the fact or event in question follows as an effect from a cause.” *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978). The events of December 1, 2010, are simply part of the overall story that ended with defendant shooting at Stokes and his friends. The prosecution was supplying the jury with the whole story, as it is allowed to do, even when the whole story involves other acts by defendant. *Sholl*, 453 Mich at 741. The altercation that

took place on December 1, 2010, was the cause, and the shooting on December 19, 2010, was the effect. The Court in *Delgado*, 404 Mich at 83, contemplated the same circumstances and found the evidence admissible without regard to MRE 404(b). We reach the same conclusion in this case. The evidence was properly admitted without regard to MRE 404(b).

Nevertheless, we have considered the merits of defendant's argument under MRE 404(b), and determine that the evidence also fell squarely within the rule as evidence of motive that was relevant to proving premeditation, deliberation, and identity. *Sabin (After Remand)*, 463 Mich at 68 (Motive is relevant to identity); *People v Rice*, 235 Mich App 429, 440; 597 NW2d 843 (1999) (citations omitted) (Proof of motive is always relevant in a murder prosecution); *People v Kvam*, 160 Mich App 189, 201; 408 NW2d 71 (1987) (citation omitted) (Motive is relevant in a murder prosecution to prove premeditation and deliberation). The evidence was highly probative and not outweighed by the danger of unfair prejudice. Therefore, even if the evidence was subject to MRE 404(b), it was still properly admitted.

Affirmed.

/s/ Mark T. Boonstra
/s/ David H. Sawyer
/s/ Christopher M. Murray