

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES BERNARD GOODWIN,

Defendant-Appellant.

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UNPUBLISHED

September 17, 1996

No. 176486

LC No. 93-130079

Before: Saad, P.J., and MacKenzie and Youngblood,\* JJ.

PER CURIAM.

The jury convicted the defendant of first-degree murder, MCL 750.316(1)(a); MSA 28.548, first-degree felony murder, MCL 750.316(1)(b); MSA 28.548, and armed robbery, MCL 750.529; MSA 28.797. The court sentenced him to three concurrent life sentences in prison. He appeals as of right. We affirm his convictions and sentences for first-degree murder and armed robbery, but vacate his conviction and sentence for felony murder.

Defendant first argues that the testimony of Karen Dahlgren should have been excluded because it was used to show defendant's criminal propensity in violation of MCR 404(b) and was substantially more prejudicial than probative. At trial, Dahlgren testified that defendant stole her car from the parking lot of a drug store a few hours after the murder of Ellen Grossman. The trial court ruled that the testimony was admissible to identify defendant as the person who stole her car, but that any details of the theft were inadmissible.

A trial court's decision to admit evidence will not be reversed absent an abuse of discretion. *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995). To find an abuse of discretion, the result must have been so violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or an exercise of passion or bias. *Id.*

While evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith, MRE 404(b)(1), if the evidence is

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\* Circuit judge, sitting on the Court of Appeals by assignment.

relevant to an issue other than a defendant's criminal propensities, it may be admitted if the danger of undue prejudice is not substantially outweighed by its probative value. *People v VanderVliet*, 444 Mich 52, 74-75; 508 NW2d 114 (1993). Evidence that defendant stole Dahlgren's car a few hours after the murder of Ellen Grossman was relevant to show that defendant was in the area and attempting to flee. It is well established in Michigan law that evidence of flight is admissible. *Coleman, supra* at 4. Such evidence is probative because it may indicate consciousness of guilt. *Id.* Moreover, the prosecution did not use the evidence of the car theft for any purpose other than to show that defendant was in the area where the murder occurred and stole the car to flee. The prosecution did not use the evidence to prove that defendant acted in conformity with his criminal character when he committed the murder. Therefore, the court did not abuse its discretion in allowing the testimony.

Defendant also contends that Dahlgren's testimony exceeded the scope of the trial court's ruling because she expanded into the details of the robbery. First, we note that testimony regarding the criminal actions accompanying an escape is admissible because those actions are part of the *res gestae* of the incident. *Id.* at 5. Moreover, all evidence offered by the parties is prejudicial to some extent, but the fear of prejudice does not generally render the evidence inadmissible. *People v Mills*, 450 Mich 61, 75; 537 NW2d 909 (1995). It is only when the probative value is substantially outweighed by the danger of unfair prejudice that evidence is excluded. *Id.* The purpose of the rule is to address the danger that marginally probative evidence will be given undue or pre-emptive weight by the jury such that it would be inequitable to allow the proponent of the evidence to use it. *Id.* at 75-76. The fact that Dahlgren told the jury that defendant called her a bitch and knocked the keys out of her hand while stealing her car was not substantially more prejudicial than probative. Dahlgren's testimony was probative because it placed defendant in the area after the murder and was evidence of his attempt to flee. There was no danger that the jury gave this evidence undue or pre-emptive weight because abundant evidence was presented from which a jury could find him guilty beyond a reasonable doubt of first-degree murder.

Defendant next argues that the statement of Detective Andrew Ordiway (i.e., that Rodney Phillips was not a suspect in Grossman's murder) was inadmissible because it improperly placed the prestige of the police department behind the alibi of Phillips. Because defendant did not object to Detective Ordiway's testimony on the ground of improper bolstering, the issue is waived unless there was plain error that affected the substantial rights of defendant. See *People v Grant*, 445 Mich 535, 546, 552-553; 520 NW2d 123 (1994). An error affects the substantial rights of a defendant if it affected the outcome of the proceedings. *Id.* at 552-553.

Defendant relies on *People v Lucas*, 138 Mich App 212; 360 NW2d 162 (1984), in support of his argument that the detective's testimony was improper. In *Lucas*, this Court held that testimony of a police officer -- that he determined it was inappropriate to issue an arrest warrant for the person whom the defendant claimed committed the crime -- was improper because this testimony placed the prestige of the police department behind the contention that the defendant was guilty. *Id.*, 220-221. However, although the purpose of Detective Ordiway's statement was to establish that Phillips' alibi had been verified, the instant case is distinguishable from *Lucas*. First, the defendant in *Lucas* was "a logical favorite suspect for the police," and that case turned on whether the jury believed the testimony

of the person who was granted immunity for testifying against defendant. *Id.* at 221-222. Furthermore, the alibi witnesses did not testify in *Lucas, id.* at 223, whereas here there were four alibi witnesses, independent of the police officer, who testified at trial and were subject to cross-examination. Detective Ordiway's testimony that Phillips was not a suspect was supported by the testimony of Anthony Stanley, Brenda Young, Doris Wilson, Mary Burris and Iola Smith that Rodney Phillips was not present in Oak Park at the time of Grossman's murder. This case did not turn on the testimony of one person and therefore, the admission of Detective Ordiway's statement was proper.

Also, there was other independent evidence against defendant from which the jury could find him guilty. Defendant was seen talking to Grossman around the time of the murder. Grossman's blood was found on clothes and boots worn by defendant on the day of the murder. In addition, defendant told at least five people that he killed Grossman. Hence, the substantial rights of defendant were not affected because even without the admission of Detective Ordiway's testimony, the result of the proceedings would have been the same. Accordingly, Detective Ordiway's statement that Phillips was not a suspect in the murder of Grossman was properly admitted.<sup>1</sup>

Finally, defendant argues that his convictions for first-degree murder, felony murder and armed robbery violated his constitutional guarantee against double jeopardy. We agree. Multiple convictions and sentences for counts of both first-degree murder and felony murder arising from the death of a single individual violate the constitutional guarantees against double jeopardy. *People v Passeno*, 195 Mich App 91, 95; 489 NW2d 152 (1992). Therefore, we vacate defendant's felony murder conviction. Although a conviction of felony murder and the underlying felony of armed robbery violated defendant's double jeopardy rights, there is no need to vacate defendant's armed robbery conviction given that we are vacating defendant's conviction and sentence for felony murder.

Therefore, we vacate defendant's conviction and sentence for felony murder, but affirm his convictions and sentences for first-degree murder and armed robbery.

Affirmed in part and vacated in part.

/s/ Henry William Saad

/s/ Barbara B. MacKenzie

<sup>1</sup> Defendant's contention that he was denied his constitutional right to confront and cross-examine all witnesses has no merit. Defendant has not preserved this issue because he cites no authority and makes no argument in support of this claim. *People v DiVietri*, 206 Mich App 61, 65; 520 NW2d 643 (1994). Furthermore, defendant was able to confront and cross-examine all the witnesses who testified that Phillips was not in the area at the time the murder was committed, as well as Detective Ordiway.