

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARLOS RICARDO GASTON,

Defendant-Appellant.

UNPUBLISHED
February 7, 1997

No. 198886

Recorder's Court
LC No. 90-012007

ON REMAND

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JERRY LEWIS,

Defendant-Appellant.

No. 198898

Recorder's Court
LC No. 90-012007

ON REMAND

Before: Fitzgerald, P.J., and Taylor and Corrigan, JJ.

PER CURIAM.

These consolidated cases are before us on remand from the Supreme Court. The Supreme Court remanded the cases for "reconsideration in light of *People v Barrera* and *People v Musall*," 451 Mich 261; 547 NW2d 280 (1996). In *Barrera* and *Musall*, the Court considered whether the trial court erroneously excluded a statement by a codefendant that was offered by the defendants as exculpatory evidence under MRE 804(b)(3).

Gaston's and Jerry Lewis' arguments in this case are weak at best, and a review of James Lewis' statement reveals that it was not exculpatory with respect to Gaston and Jerry Lewis. Although the statement inculpated James Lewis as the shooter, James Lewis stated that he, Gaston and Jerry Lewis went to Terrance's house because Jerry Lewis wanted to "even up the score" for an incident that had occurred earlier when Jerry Lewis was hit with a gun at Terrence's house. James Lewis stated that Gaston and Jerry Lewis knew that he had a gun and that they wanted to "teach Terrance a lesson." James Lewis stated that Carlos stayed out in front of the house to be the "look out." James and Jerry Lewis were supposed to "get Jerry's stuff, work him (Terrance) over a little bit, and then go." The statement is, clearly, inculpatory with respect to Gaston and Jerry Lewis. Contrary to Jerry Lewis' and Gaston's contentions, the trial court's refusal to admit James Lewis' statement did not deny them the constitutional right to present exculpatory evidence.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Clifford W. Taylor

/s/ Maura D. Corrigan