

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CONNIE MARIE GREEN,

Defendant-Appellant.

UNPUBLISHED

May 23, 1997

No. 196811

Recorder's Court

LC No. 95-006244-01

Before: Holbrook, Jr., P.J., and MacKenzie and Murphy, JJ.

MEMORANDUM.

Defendant was convicted by a jury of voluntary manslaughter, MCL 750.321; MSA 28.553, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). She appeals as of right and we affirm.

Defendant first argues that the trial court abused its discretion in admitting evidence that defendant fought with and shot the woman with whom her boyfriend (the decedent) had an affair. Defendant argues that the evidence was inadmissible under MRE 404(b). We find no abuse of discretion. Evidence of other bad acts committed by a defendant is admissible if offered for a proper purpose other than to show the defendant's character or propensity to commit the offense. *People v VanderVliet*, 444 Mich 52, 74; 508 NW2d 114 (1993). A general plea of not guilty puts all the elements of a charged offense at issue. *Id.* at 78.

Here, the trial court correctly found the evidence of defendant's altercation with the woman to be highly probative of defendant's intent to kill the decedent. The evidence supported the prosecution's theory that defendant discovered that her boyfriend had an affair with the woman, contemplated the situation for a couple days, and then tried to kill both of them. The evidence also contradicted defendant's theory at trial that she did not intend to shoot the decedent. The risk of undue prejudice did not substantially outweigh the probative value of the evidence. MRE 403. Moreover, as the trial court noted, the evidence was admissible as part of the *res gestae* of the offense. See *People v Delgado*, 404 Mich 76, 83; 273 NW2d 395 (1978).

Defendant also argues that her trial counsel was ineffective for failing to file a motion to suppress her statement to police. To establish ineffective assistance of counsel, a defendant must show that counsel's performance fell below an objective standard of reasonableness, and that the deficient performance prejudiced the defense. *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995). While failure to file a pretrial motion to suppress can be the basis for a finding of ineffective assistance of counsel, *People v Thomas*, 184 Mich App 480, 482; 459 NW2d 65 (1990), defendant here cannot establish prejudice to her case because the trial court sua sponte conducted an evidentiary hearing on the admissibility of defendant's statement. Accordingly, defendant has not established entitlement to appellate relief on this basis. See *People v Ullah*, 216 Mich App 669, 684-685; 550 NW2d 568 (1996).

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Barbara B. MacKenzie

/s/ William B. Murphy