

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CORRANDIUS JONES,

Defendant-Appellant.

UNPUBLISHED

June 27, 1997

No. 192114

Genesee Circuit Court

LC No. 95-052751-FC

Before: White, P.J., and Bandstra and Smolenski, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). Defendant pleaded nolo contendere to felon in possession of a firearm, MCL 750.224f; MSA 28.421(6). Defendant was sentenced as a second-offense habitual offender, MCL 769.10; MSA 28.1082, to a term of two years' imprisonment for the felony-firearm conviction, such sentence to be followed consecutively by concurrent terms of twenty to thirty years' imprisonment for the assault conviction and three to five years' imprisonment for the felon-in-possession conviction. Defendant appeals as of right. We affirm.

Defendant's convictions arise out of an incident in which defendant requested the complainant to test some crack cocaine to determine its saleability. Defendant drove the complainant to a park and then shot the complainant numerous times. At trial, defendant presented the defense of alibi and also attacked the complainant's credibility.

Defendant first argues that the complainant's testimony indicating that defendant was a drug dealer was admitted into evidence in violation of MRE 404(b) and MRE 403. Defendant also contends that the prosecutor improperly used this evidence to portray defendant as a violent person who probably committed the crimes of which he was accused. However, with respect to defendant's evidentiary issue, defendant did not object below on the basis of MRE 404(b) or MRE 403, but on the ground of lack of foundation. An objection based on one ground at trial is insufficient to preserve an appellate attack based on a different ground. *People v Asevedo*, 217 Mich App 393, 398; 551

NW2d 478 (1996). In any event, the evidence was properly admitted to give the jury the complete story of the crime, not to show defendant's criminal propensity or to

establish that he acted in conformity therewith. *People v Sholl*, 453 Mich 730, 742; 566 NW2d 851 (1996); *People v VanderVliet*, 444 Mich 52; 508 NW2d 114 (1993), amended 445 Mich 1205 (1994). We likewise reject defendant's unpreserved claim of prosecutorial misconduct because the prosecutor did not use the evidence indicating that defendant was a drug dealer to improperly prejudice defendant. *People v Nantelle*, 215 Mich App 77, 86-87; 554 NW2d 667 (1996).

Next, defendant argues that the trial court abused its discretion in admitting a police officer's opinion testimony concerning the general reasons why witnesses may refuse to talk to the police. The trial court overruled defendant's objection to this testimony on the ground of speculation. We find no abuse of discretion in this regard where the officer's testimony was rationally based on his perceptions and helpful to a clear understanding of his testimony. MRE 701; *People v Gibson*, 219 Mich App 530, 532; 557 NW2d 141 (1996). To the extent that defendant raises additional grounds on appeal to support his claim of error, defendant has failed to preserve these grounds for our review where he did not raise them below. *Asevedo, supra*.

Next, defendant argues that the trial court erred in barring the testimony of a police officer that defendant voluntarily went in and talked to the police. Defendant contends that this evidence was probative of innocence.¹ Even assuming error, we conclude that the error does not require reversal. Defendant's statement to the police was eventually admitted through the rebuttal testimony of the police officer. The officer testified that he told defendant in a telephone conversation that defendant had been named as the shooter in the assault. The officer told defendant that if he came in and gave a statement, that he would not be placed under arrest on that date. Through the officer's testimony, the jury was aware that defendant was not arrested when he was talking to police. Although defendant was not permitted to emphasize this point, the jury may well have inferred that defendant was talking to the police voluntarily. In light of this and the other evidence presented during trial, we conclude it is both highly probable and more probable than not that the barred testimony did not affect the jury's verdict. *People v Mateo*, 453 Mich 203, 220; 551 NW2d 891 (1996); *People v Humphreys*, 221 Mich App 443, 449; 561 NW2d 868 (1997). Accordingly, the error was harmless. *Mateo, supra* at 221; *Humphreys, supra* at 3.

Finally, defendant argues that the trial court erred in permitting four prosecution witnesses to testify that the complainant identified defendant as the shooter. However, defendant rightfully does not contend that this testimony constituted inadmissible hearsay. MRE 801(d)(1)(C); *People v Malone*, 445 Mich 369, 377; 518 NW2d 418 (1994). Rather, defendant argues for the first time on appeal that the admission of this evidence constituted improper bolstering under MRE 403. See *Malone, supra* at 390, n 19. We disagree. In this case, the identity of the shooter was the key issue for the jury to decide. Defendant contended that he had an alibi, and presented witnesses as part of his alibi defense. The victim identified defendant as the person who shot him. There were no eyewitnesses who testified other than the victim and there was little physical evidence presented. The testimony of the various witnesses that the victim immediately identified defendant as shooter was substantive evidence that was relevant to the key issue in the case. *Id.* at 377. The probative value of this evidence was not substantially outweighed by the danger of unfair prejudice to defendant or considerations of needless presentation of cumulative evidence. Accordingly, we find no error under MRE 403.

Affirmed.

/s/ Helene N. White

/s/ Richard A. Bandstra

/s/ Michael R. Smolenski

¹ We reject defendant's unpreserved contention that his constitutional right to compulsory process was violated where the police officer testified at trial and the issue below was simply the admissibility of certain testimony by the officer.