

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHON DESMOND HOUSTON,

Defendant-Appellant.

UNPUBLISHED
November 9, 2004

No. 248742
Wayne Circuit Court
LC No. 03-001609-01

Before: Wilder, P.J., and Hoekstra and Owens, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree premeditated murder, MCL 750.316(1)(a), felon in possession of a firearm, MCL 750.224f, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant to concurrent terms of life imprisonment for the murder conviction and 1½ to 5 years' imprisonment for the felon in possession of a firearm conviction, to be served consecutive to two years' imprisonment for the felony-firearm conviction. We affirm.

Defendant's first claim on appeal concerns the prosecution's admission of evidence that defendant assaulted with a gun and threatened to kill witness Laverio Crooks. We begin by reviewing the context in which this evidence was admitted.

At trial, Crooks testified that he and defendant were friends on September 6, 2002, the date of the incident in the present case. Crooks, a drug dealer, stated that on that date, he observed defendant confront the victim regarding whether the victim, who was a drug user, would make a purchase from defendant, another drug dealer on defendant's block. According to Crooks, the confrontation culminated with defendant entering a residence and returning with a firearm that he used to shoot and kill the victim. Thus, to the prosecution, Crooks was a significant eyewitness to the crime.

However, Crooks did not come forward to police immediately. Rather, he testified that on three occasions he refused to cooperate with police when they questioned him about the homicide. On November 9, 2002, Crooks had an encounter with defendant. Crooks testified that he had slept in his car that evening and awoke to find defendant pointing a gun at his head and threatening to kill him. Crooks stated that defendant told him, "you don't run this block. This is my block." Crooks reported this assault to the police. Crooks then assisted the police in

arresting defendant and revealed to police that he witnessed the homicide at issue in the present case.

The record also reveals that before defense counsel made an opening statement to the jury, he addressed the court outside of the jury's presence concerning the potential evidence of defendant's assault on Crooks. In essence, defense counsel requested permission from the trial court to introduce the fact that Crooks did not cooperate with police regarding the homicide investigation until after he made an assault complaint against defendant, without opening the door to the prosecution to reveal the details of the assault itself. The trial court declined to make a ruling at that point in the proceeding.

Subsequently, during direct examination of Crooks, the prosecution, apparently now anticipating defendant's strategy, questioned Crooks about the assault. Defendant objected on grounds of relevance, but the trial court overruled the objection, finding that the evidence was relevant to Crooks' reason to testify, and at that point Crooks testified about the assault. Additionally, Crooks testified on direct examination that this incident ended his friendship with defendant, but that the reason that he decided to testify against defendant in this case was unrelated to the assault. Rather, Crooks maintained that he "felt bad because a person[s] life was taken," and testifying for the prosecution "would make me rest easy." On cross-examination, Crooks again denied that any connection existed between the assault and his testimony despite, as defense counsel's questioning suggested, the coincidence of the timing between the assault and Crook's subsequent decision to cooperate with the investigation and prosecution of this case.

Defendant complains on appeal that the introduction of this evidence of his assault on Crooks denied him a fair trial. Specifically, defendant argues that such evidence was improperly admitted under MRE 404b and 403.

We review a trial court's decision on admission of evidence for an abuse of discretion. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003). However, to preserve an issue for review on appeal, a party usually must make a timely objection and specify the same grounds for challenge as the party seeks to assert on appeal. *People v Kimble*, 470 Mich 305, 309; 684 NW2d 669 (2004); *People v Moorer*, 262 Mich App 64, 78; 683 NW2d 736 (2004). In this case, although defendant timely objected, he specified grounds of relevance. Consequently, his claims under MRE 404b and 403 are unpreserved. We review unpreserved claims for plain error. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999); *Moorer, supra* at 68.

To avoid forfeiture under the plain error rule, three requirements must be met: (1) an error must have occurred; (2) the error must have been plain error; (3) and the plain error must have affected substantial rights, i.e., the defendant was prejudiced (the defendant generally must show that the error affected the outcome of the lower court proceedings). An appellate court must then exercise its discretion in deciding whether to reverse a defendant's conviction. Reversal is warranted only when the plain error results in a conviction of an innocent defendant or seriously affects the fairness, integrity, or public reputation of judicial proceedings independent of the defendant's innocence. [*Moorer, supra* (citations omitted).]

Here, we find no plain error because defendant essentially was the proponent of the evidence. Before the court, defendant indicated his intent to utilize this evidence to attack Crooks' credibility, which was clearly at issue. In response, as a matter of trial strategy, the prosecutor appears to have chosen to attempt to diffuse the probative value of the evidence to the defense by introducing it on direct examination.¹ Without proper objection, this trial tactic does not shift to the prosecution the obligation to defend the admissibility of the evidence against MRE 404b or 403 challenges on appeal.

Further, to the extent that defendant's preliminary discussions with the trial court can be interpreted to be as an objection under MRE 403, we note that defendant never requested a ruling at the time the evidence was being presented as the trial court had suggested. Determinations of whether the prejudicial effect of evidence outweighs its probative value are best left to the trial court. *People v Bahoda*, 448 Mich 261, 291; 531 NW2d 659 (1995). Without the benefit of a contemporaneous assessment by the trial court of the presentation, credibility, and effect of the testimony, *id.*, we conclude that defendant has not established that admission of the evidence of an assault by defendant on Crooks constituted an abuse of discretion.

Next, defendant argues that the trial court erroneously instructed the jury on the causation element of first- and second-degree murder. However, by affirmatively indicating his satisfaction with the jury instructions, defendant waived appellate review of this issue. *People v Lueth*, 253 Mich App 670, 688; 660 NW2d 322 (2002). In any event, we find without merit defendant's claim that the causation instructions were improper. Defendant relies on a technical interpretation of the causation instructions, which is not warranted in the context of the issues raised in the trial. Taken as a whole, the instructions adequately protected defendant's rights by fairly presenting to the jury the issues in this case. *People v Dumas*, 454 Mich 390, 396; 563 NW2d 31 (1997). Consequently, defendant's claim that counsel was ineffective for failing to object is likewise without merit. *People v Rodriguez*, 212 Mich App 351, 356; 538 NW2d 42 (1995) (observing that "counsel is not required to make a groundless objection").

Affirmed.

/s/ Kurtis T. Wilder
/s/ Joel P. Hoekstra
/s/ Donald S. Owens

¹ See MRE 607 ("The credibility of a witness may be attacked by any party, including the party calling the witness.")