

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
February 12, 2013

v

JAJUAN LAMARR MCFARLAND,

Defendant-Appellant.

No. 304647
Wayne Circuit Court
LC No. 10-012247-FC

Before: FORT HOOD, P.J., and K. F. KELLY and DONOFRIO, JJ.

PER CURIAM.

Defendant was convicted, following a jury trial, of two counts of armed robbery, MCL 750.529, 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.¹ He appeals by right, and we affirm.

Defendant's convictions arise from the robbery of two individuals who were walking down the street one morning. The victims, a woman and her fiancé, were walking when they were approached by two men, both carrying guns. Defendant was identified as one of the men. The men robbed them of a cellular telephone, a wallet, and cigarettes. With the assistance of a passing motorist, the two victims were able to call 911 and report the robbery. A short time later, the victims reported observing defendant and his accomplice robbing two other individuals across the street. Police arrived on the scene, and the two men fled. Defendant stopped in front of a building, where he was apprehended. A man, Richard Richardson, approached and advised police that he was just robbed by defendant. Another witness, Diane Dickerson, advised police that defendant threw a gun on top of the building. With the assistance of the fire department, police recovered a gun from the roof of the building. Although defendant was charged with the purported robbery that occurred across the street, the charges were dismissed when those witnesses could not be located. On appeal, defendant challenges the admission of evidence that he possessed a firearm immediately prior to his arrest as a violation of the right of confrontation,

¹ Defendant was sentenced, as an habitual offender, third offense, MCL 769.11, to 192 to 420 months' imprisonment for the armed robbery convictions, 12 to 60 months' imprisonment for the felon in possession conviction, and 24 months' imprisonment for the felony-firearm conviction. His sentences are not at issue in this appeal.

the admission of other acts evidence, and the validity of the convictions when the cumulative effect of those errors warrant reversal.

The trial court's decision to admit evidence is reviewed for an abuse of discretion. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003). When the decision to admit evidence involves a preliminary question of law, such as whether an evidentiary rule precludes admission of the evidence, the issue is reviewed de novo. *Id.* An abuse of discretion occurs when the trial court selects an outcome that falls outside the range of reasonable and principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). The constitutional question whether a defendant was deprived of his constitutional right to confront witnesses is reviewed de novo. *People v Benton*, 294 Mich App 191, 195; 817 NW2d 599 (2011).

In every criminal trial, the federal and state constitutions protect the defendant's right to be confronted with the witnesses against him. US Const, Am VI; Const 1963, art 1, § 20. "The Confrontation Clause of the Sixth Amendment bars the admission of testimonial hearsay unless the declarant is unavailable and the defendant has had a prior opportunity for cross-examination." *People v Payne*, 285 Mich App 181, 197; 774 NW2d 714 (2009). A statement is testimonial if "the declarant should reasonably have expected the statement to be used in a prosecutorial manner and if the statement was made under circumstances that would cause an objective witness reasonably to believe that the statement would be available for use at a later trial." *People v Dendel (On Second Remand)*, 289 Mich App 445, 453; 797 NW2d 645 (2010). "[S]tatements are not testimonial 'when made in the course of police interrogation under circumstances objectively indicating that the primary purpose of the interrogation is to enable police assistance to meet an ongoing emergency.'" *Id.* at 454 citing *Davis v Washington*, 547 US 813, 822; 126 S Ct 2266; 165 L Ed 2d 224 (2006).

Statements are "testimonial when the circumstances objectively indicate that there is no such ongoing emergency, and that the primary purpose of the interrogation is to establish or prove past events potentially relevant to later criminal prosecution." *Michigan v Bryant*, ___ US ___; 131 S Ct 1143, 1154; 179 L Ed 2d 93 (2011) (further citation omitted). When a victim or witness speaks of events that were actually happening, as opposed to past events, they represent an ongoing emergency, the elicited statements were necessary to resolve the presence of the emergency, and the statements were not formal. *Id.* Consequently, statements are non-testimonial when they describe events as they happen and are necessary to resolve a present emergency. *Id.* When police interrogation is primarily undertaken to respond to an ongoing emergency, it is not designed to create an out of court substitute for trial testimony. *Id.* Therefore, a violation of the Confrontation Clause does not occur under those circumstances. Additionally, even if a statement is testimonial, the Confrontation Clause "does not bar the use of out-of-court testimonial statements for purposes other than establishing the truth of the matter asserted." *People v Chambers*, 277 Mich App 1, 10-11; 742 NW2d 610 (2007). If the statement is merely offered to show the impact of an out-of-court statement on the hearer, it does not violate the Confrontation Clause. *Id.* at 11. "Specifically, a statement offered to show why police officers acted as they did is not hearsay." *Id.*

Contrary to the assertion by the defense, there was no violation of the Confrontation Clause. The statement by Dickerson was not testimonial. It was not taken in anticipation of a criminal proceeding and as a substitute for trial testimony, but rather, occurred in the context of

an ongoing emergency when police were attempting to secure the perpetrators of a crime and the weapon used in the commission of the crime, *Michigan*, 131 US at 1154, and offered to show why the police acted as they did, *Chambers*, 277 Mich App at 11. Defendant's contention that the witness referred to a past event is unavailing, the witness described an event which had just occurred.

Additionally, the trial court did not abuse its discretion by admitting evidence of the subsequent robbery. *Katt*, 468 Mich at 278. A jury is entitled to hear the "complete story" surrounding the matter in issue. *People v Sholl*, 453 Mich 730, 742; 556 NW2d 851 (1996). Evidence of other criminal events are admissible when so blended or connected to another crime of which the defendant is accused such that proof of one incidentally involves or explains the circumstances of the other. *Id.* "The more the jurors kn[ow] about the full transaction, the better equipped they [are] to perform their sworn duty." *Id.* Contrary to the assertion raised by the defense, the evidence was not admitted to demonstrate that defendant had engaged in other bad acts. Rather, it was presented to establish the circumstances surrounding defendant's arrest.

Lastly, defendant contends that the cumulative effect of errors deprived him of a fair trial. We disagree. To determine whether cumulative effect of errors warrants reversal, only actual errors are aggregated. *People v Bahoda*, 448 Mich 261, 293 n 64; 531 NW2d 659 (1995). Because there was no error in the admission of evidence, defendant is not entitled to appellate relief.

Affirmed.

/s/ Karen M. Fort Hood
/s/ Kirsten Frank Kelly
/s/ Pat M. Donofrio