

**State of Michigan
In the Supreme Court**

People of the State of Michigan,
Plaintiff-Appellee,

Supreme Court No. 156720

v

Court of Appeals No. 332500

Raymond Charles Pierson,
Defendant-Appellant.

Circuit Court No. 10-1241 FH

Brian L. Mackie (P25745)
Washtenaw County Prosecutor
Attorney for Plaintiff-Appellee
P.O. Box 8645
Ann Arbor, MI 48107-8645
(734) 222-6620

Raymond Charles Pierson (Inmate No. 370457)
Defendant in pro per
Thumb Correctional Facility
3225 John Conley Drive
Lapeer, Michigan 48446

**Plaintiff-Appellee's Answer to
Defendant-Appellant's Application for Leave to Appeal**

Brian L. Mackie (P25745)
Washtenaw County Prosecutor

By: Mark Kneisel (P49034)
First Assistant Prosecutor
P.O. Box 8645
Ann Arbor, MI 48107-8645
(734) 222-6620

Counterstatement Identifying Judgment or Order Appealed

This Court has jurisdiction over the instant Application for Leave to Appeal pursuant to MCR 7.303(B)(1).

Defendant-Appellant applies to this Court for leave to appeal the Court of Appeals opinion dated September 12, 2017, in which the court affirmed Defendant-Appellant's convictions.¹ The Court of Appeals issued three opinions on the issue, including the Lead Opinion, a concurrence, and a partially concurring, partially dissenting opinion. Each of the three opinions agreed on the point that, if error occurred, it was harmless.²

¹ *People v Pierson*, ___ Mich App ___; ___ NW2d ___; (2017) (Docket No. 332500).

² *Pierson*, ___ Mich App ___; slip op at 1, 3.

Counterstatement of Question Presented

I. An eyewitness saw Defendant entering the victim's apartment armed with an AK-47. A bag containing AK-47 ammunition was discovered in Defendant's mother's car parked near the apartment. At trial, the court merely mentioned the admissibility of Defendant's statements made at the scene, not whether they were made voluntarily. The court's comments had little to no effect on the outcome of the trial. Did Defendant receive a fair trial?

Plaintiff-Appellee answers, "Yes."

Defendant-Appellant answers, "No."

Circuit Court answered, "Yes."

Court of Appeals answered, "Yes."

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Counterstatement of Material Proceedings and Facts

In the early morning of July 25, 2010 Officer Sean Urban was patrolling an apartment complex when he overheard a commotion. He investigated, finding two men, Defendant Raymond Pierson and the victim Corey Taylor, struggling over an AK-47 assault rifle. The officer approached, giving verbal commands for the two to stop.³ After the gun was thrown to the ground and the two separated, the victim remained on the ground with his hands up; Defendant walked away, ignoring the officer's commands. When Defendant attempted to evade capture, Officer Urban pursued and tased Defendant, eventually capturing and handcuffing him.⁴

As Officer Urban walked him over to a squad car, Defendant made an unsolicited statement, saying "I broke into his house but the guy had the gun."⁵ Officer Urban had neither begun questioning Defendant nor given Defendant his *Miranda* warnings. Defendant was placed in the custody of Deputy Sheriff Daniel Buffa and given his *Miranda* warnings, which he voluntarily waived.⁶ When the sheriff asked him to describe what happened, Defendant admitted that a friend dropped him off near the complex and that he intended to break into the victim's apartment. He told the deputy that when he opened the screen door and poked his head in, he did not see anyone, so he proceeded inside and saw the victim holding the AK-47.⁷ Defendant claimed the victim attacked him.

³ Jury Trial Transcript; Volume I; 1/30/12; pp 233-36.

⁴ Trial-I; 1/30/12; pp 238-43.

⁵ Trial-I; 1/30/12; pp 243-44.

⁶ Trial-II; 1/31/12; pp 40-42; at trial, Deputy Sheriff Buffa testified that there was no recording of his and Defendant's conversation because, prior to receiving the dispatch from Officer Urban, the deputy's shift had ended and he had already removed the video equipment from his car.

⁷ Trial-II; 1/31/12; pp 42-44.

Deputy Sheriff Buffa exited the car and conferred with other officers at the scene who had discovered a car near the victim's apartment registered to Defendant's mother, Patricia Pierson. The officers also found a bag on the passenger's seat containing two magazines of ammunition with bullets matching the caliber of the AK-47.⁸ The deputy reentered the squad car and told Defendant about the car and the bag.⁹ In response, Defendant offered a new version of events. Defendant told the deputy that an ex-girlfriend of the victim told him the victim was a drug dealer who kept a large amount of money stashed in his apartment. Defendant admitted that, based on this information, he entered the victim's apartment with the AK-47, and the fight began after the victim saw him. He stated that he went to the apartment to rob the victim and that he needed the gun to commit the burglary because "you see how shit can get bad."¹⁰ Deputy Sheriff Buffa ended the conversation and gave custody of Defendant over to another deputy.

Defendant was interviewed again 12 hours later at the Washtenaw County Jail. During that interview by Detective Grant Toth, Defendant gave a wholly different account of the incident.¹¹ He claimed the victim called him at 3:00 a.m. asking for a ride to the store because one of the headlights on his car was out.¹² Defendant claimed that when he arrived at the apartment, the victim came outside without a shirt on and placed the bag on the passenger's seat. Defendant told the deputy that,

⁸ Trial-I; 1/30/12; pp 244-52.

⁹ Trial-II; 1/31/12; pp 46-47.

¹⁰ Trial-II; 1/31/12; pp 48-49.

¹¹ Trial-II; 1/31/12; pp 74, 81, 83; Defendant was given his *Miranda* rights and waived these rights for a second time prior to Detective Toth's interview of Defendant.

¹² Trial-II; 1/31/12; p 94; the victim's car was eventually seized; both headlights were functioning.

after the victim went back inside to put on a shirt, he looked inside the bag and became angry when he found the AK-47 inside. Defendant claimed it was at this point that he took the gun, exited the car, went to the apartment, and began fighting with the victim.¹³

Defendant was charged with First Degree Home Invasion, Felon in Possession of a Firearm, Possession of a Firearm During the Commission of a Felony, Second Offense, and Resisting and Obstructing a Police Officer.¹⁴ On November 11, 2011, Defendant filed a Motion to Suppress all statements made after he was apprehended, except the statement given to Detective Toth. After a two-part evidentiary hearing, the trial court ruled that the statements were admissible.

At trial, during re-direct examination of Officer Urban, the Prosecution asked the officer to describe the circumstances surrounding Defendant's statement "I broke into his house but the guy had the gun," and when Defendant was read his *Miranda* rights. The trial court stopped the Prosecution's questioning, stating "[t]he Court already held a hearing on this matter and I have ruled that the defendant was properly advised of his rights and that the statements that have been introduced are admissible."¹⁵ Defense counsel objected, to which the court responded, "[f]ine. Go ahead. It's true. Have a seat."¹⁶ During re-cross examination, defense counsel asked Officer Urban about the statement and mentioned the court's remark about its admissibility, to which the officer replied "[t]he Judge said it. I

¹³ Trial-II; 1/31/12; pp 85-91.

¹⁴ Trial-I; 1/30/12; pp 172-74.

¹⁵ Trial-II; 1/31/12; p 28.

¹⁶ Trial-II; 1/31/12; pp 29-30.

don't know if I appreciate it." The trial court cut off defense counsel's follow-up question, saying "[y]ou know what, that doesn't matter either. So go ahead."¹⁷

Several witnesses testified against Defendant at trial, including Officer Urban, Deputy Buffa, Detective Toth, Cassandra Jackson—an eye-witness to the offenses, and Ronald Chambers—a security guard at the apartment complex. Inculpatory evidence presented at trial included: photographs of the scene, the AK-47, the black bag containing AK-47 ammunition, the ammunition itself, and gun magazines.¹⁸ At the end of trial, Defendant was convicted of all four offenses and sentenced on March 13, 2012 as a Fourth Habitual Offender.¹⁹

Defendant submitted an appeal of right to the Court of Appeals and his convictions were affirmed (Docket No. 309315). This Court subsequently denied leave to appeal. Defendant then submitted a seven-issue Motion for Relief from Judgment to the trial court. After that motion was denied, Defendant submitted a Motion for Reconsideration, which was also denied. Defendant requested leave to appeal from the Court of Appeals; leave was only granted for Issue II.²⁰ The Court of Appeals issued a Lead Opinion, affirming Defendant's conviction, a concurring opinion, and a partially concurring, partially dissenting opinion. Defendant filed an Application for Leave to Appeal to this Court on November 7, 2017.

The People will present additional facts as they relate to the issue in the Argument section of this Brief.

¹⁷ Trial–II; 1/31/12; p 29.

¹⁸ Trial–I; 1/30/12; pp 254-57.

¹⁹ Sentencing Transcript; 3/13/12; pp 13-15.

²⁰ *Pierson*, ___ Mich App at ___; slip op at 1.

Argument

I. An eyewitness saw Defendant entering the victim's apartment armed with an AK-47. A bag containing AK-47 ammunition was discovered in Defendant's mother's car parked near the apartment. At trial, the court merely mentioned the admissibility of Defendant's statements made at the scene, not whether they were made voluntarily. The court's comments had little to no effect on the outcome of the trial. Defendant's due process rights were not violated and he received a fair trial.

Standard of Review

The question of whether a defendant's due process right to a fair trial has been violated is one of constitutional law reviewed *de novo*.²¹

Discussion

A trial court is given wide latitude and power in overseeing the matter of trial conduct.²² In review for error, a court should consider the record as a whole to avoid finding judicial bias within out-of-context statements.²³ A trial court is in error, and a defendant is denied a fair and impartial trial, when the court's "conduct or comments unduly influence the jury..."²⁴ While it is error for a trial court to inform the jury that it had already determined a defendant's confession to be voluntary, such comments may not warrant reversal.²⁵ Here, Defendant argues that he was deprived a fair and impartial trial when the trial court mentioned the admissibility of his statements to police. This argument is misguided.

²¹ *People v LeBlanc*, 465 Mich 575, 579; 640 NW2d 246 (2002).

²² *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995).

²³ *Paquette*, 214 Mich at 340.

²⁴ *Paquette*, 214 Mich at 340.

²⁵ *People v Gilbert*, 55 Mich App 168, 171-73; 222 NW2d 305 (1974); *People v Corbett*, 97 Mich App 438, 442; 296 NW2d 64 (1980).

One of the many roles of a trial court is determining the admissibility of evidence. Once admissibility has been determined, it is the role of the jury to consider the evidence as a whole and determine its weight and credibility. A trial court's comments create reversible error only when they put the role of the jury in question, forcing the jury to side with or against the court. Trial courts are prevented from mentioning the voluntariness of a statement because doing so leaves the jury wondering what is being asked of them.²⁶ A trial court's statement informing the jury that a defendant's statement was ruled admissible "merely place[s] the statement on an equal footing with all other admitted evidence."²⁷

In this case, the court stated that it had "held a hearing on this matter and ... ruled that the defendant was properly advised of his rights and that the statements that have been introduced are admissible."²⁸ Because there was no mention of whether the statement was voluntarily made, the court did not usurp the jury's role in determining the weight and credibility of the statement. The jury was merely told that, like all the other evidence offered at trial, it could consider the Defendant's statements and the context in which they were given, to decide whether they were voluntarily made or not. Further, the court's statement was made during an attempt to cut off the Prosecution's re-direct examination. If anything, the jury witnessed the court intervene against the Prosecution's presentation, leaving the jury in a position to side in favor of Defendant.

²⁶ *People v Mathis*, 75 Mich App 320, 324; 255 NW2d 214 (1977).

²⁷ *Gilbert*, 55 Mich App at 172.

²⁸ Trial-II; 1/31/12; p 28.

Defendant argues that he was prevented from familiarizing the jury with the circumstances surrounding the taking of his statements when the court prevented defense counsel's attempts to further explore the circumstances under which Defendant was advised of his *Miranda* rights. The trial court's limitation of defense counsel's questioning, however, in no way prevented Defendant from challenging the credibility of the officer or whether Defendant's statement was actually made.²⁹ Defense counsel's overall line of questioning called Officer Urban's testimony into question on various points, including whether the Defendant felt intimidated by the officer at the time he made the statement and whether the officer had properly reported the events at the scene.³⁰ Additionally, when the court stopped defense counsel's questioning, the officer responded, stating that he did not appreciate the court's previous comment about the admissibility of Defendant's statement, once again cutting against the impact of the court's comments.

Even if the trial court's statements were made in error, they did not prejudice the Defendant so as to deprive him of a fair and impartial trial. The court's instructions to the jury at both the beginning and end of trial, coupled with the weight of the evidence against Defendant minimized any negative affect of the court's statements.

At the beginning of trial, the court read preliminary jury instructions, including that the jury could only base its decision on the evidence in the case, not the

²⁹ *Gilbert*, 55 Mich App at 172.

³⁰ Trial-I; 1/30/12; pp 262-67.

arguments or opening or closing statements of the attorneys.³¹ The court further instructed that it is the role of the court to make decisions as to evidence and to applicable law. The jury was also informed that it must only make its decision based on admitted evidence and that its role is to decide the facts of the case and which witnesses and testimony to believe.³² The court also instructed that it is the court's role to rule on objections according to the law and that the court's ruling for one side or the other did not reflect the opinion of the court in relation to the facts.³³ The court asked, and the jury agreed, that it would abide by the instructions given.³⁴ At the close of trial, the judge instructed the jury that the rulings and comments of the court were not evidence, that the jury must disregard any opinion it believed the judge might have, and that the jury was the sole judge of the facts.³⁵ The jury instructions, as a whole, were enough to overcome any prejudice to Defendant.

Moreover, a jury is presumed to follow the instructions of the trial court,³⁶ “unless there is an overwhelming probability that the jury will be unable to follow the court's instructions, and a strong likelihood that the effect of the evidence would be devastating to defendant.”³⁷ The weight of the evidence, coupled with the above jury instructions, was enough to overcome any prejudice instilled by the court's comments. An eyewitness saw Defendant enter the victim's apartment holding an

³¹ Trial-I; 1/30/12; pp 163-64.

³² Trial-I; 1/30/12; pp 165-66.

³³ Trial-I; 1/30/12; p 167.

³⁴ Trial-I; 1/30/12; p 171.

³⁵ *Pierson*, ___ Mich App at ___; slip op at 2.

³⁶ *People v Stevens*, 498 Mich 162, 177; 869 NW2d 233 (2015).

³⁷ *People v Dennis*, 464 Mich 567, 581; 628 NW2d 502 (2001).

AK-47 and identified him as the perpetrator in open court.³⁸ The arresting officer testified to seeing the victim and Defendant wrestling for the gun and the Defendant's refusal to cooperate after the fight ended.³⁹ The officer also testified that the victim remained on the ground with his hands up while Defendant attempted to evade capture, running between cars, pretending to cooperate, and eventually trying to make a run for it.⁴⁰

Photographs of the scene were offered into evidence, including pictures of the gun on the ground. Evidence was admitted of the car registered in Defendant's mother's name sitting near the crime scene, along with pictures of the bag containing AK-47 ammunition found in the passenger's seat of Defendant's mother's car.⁴¹ There was ample evidence admitted relating to the content of Defendant's statement and the fact that he had not been advised of his *Miranda* rights when the statement was made. Finally, defense counsel's closing argument brought the testimony of the witnesses into question, specifically the credibility of the police in relation to the trustworthiness of their reports.

Considering the context of the trial as a whole, including the jury instructions, evidence, and the examination of witnesses, Defendant was not deprived of a fair trial by the comments of the court. What little effect the court's comments may have had imparted harmless error into the trial, not reversible error. Defendant's Application for Leave to Appeal, therefore, should be denied.

³⁸ Trial-I; 1/30/12; p 189.

³⁹ Trial-I; 1/30/12; pp 235-36.

⁴⁰ Trial-I; 1/30/12; pp 239-42.

⁴¹ Trial-I; 1/30/12; pp 245, 247-57.

Relief Sought

Plaintiff-Appellee, the People of the State of Michigan, respectfully request that this Court deny Defendant-Appellant's Application for Leave to Appeal.

Respectfully submitted,

Brian L. Mackie (P25745)
Washtenaw County Prosecutor

By: /s/ Mark Kneisel
Mark Kneisel (P49034)
First Assistant Prosecutor
P.O. Box 8645
Ann Arbor, MI 48107
(734) 222-6620

and Veronica Prange
Student Intern

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