

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

TROY RIENSTRA, a/k/a TROY REINSTRA,

Defendant-Appellant.

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UNPUBLISHED

August 21, 1998

No. 192653

Muskegon Circuit Court

LC No. 95-037985 FC

Before: Saad, P.J., and Jansen and Hoekstra, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions for assault with intent to rob while armed, MCL 750.89; MSA 28.284, and conspiracy to commit armed robbery, MCL 750.157a; MSA 28.354(1), MCL 750.529; MSA 28.797. Defendant was sentenced as a second-felony habitual offender to an enhanced term of life imprisonment for each conviction. MCL 769.10; MSA 28.1082. We affirm.

First, defendant argues that the trial court should have granted his motion to disqualify the prosecutor's office because an assistant prosecutor allegedly violated his attorney-client privilege by examining privileged documents. The determination of the existence of a conflict of interest relating to the prosecutor's office is a finding of fact that we review for clear error. MCR 2.613(C); *People v Doyle*, 159 Mich App 632, 641; 406 NW2d 893 (1987). Because of his suspicions that defendant was exchanging written communications about the case (i.e., "kites") with codefendants housed in the same jail, the assistant prosecutor assigned to defendant's case requested authorities at the jail to seize the kites from defendant's cell. When the prosecutor learned that the officers had confiscated other documents as well, he refused to look at anything until the officers separated the kites from the other material, after which he examined only the kites. The trial court concluded that there was no confidential communication among the documents examined by the prosecutor, that the process followed was appropriate, and that no violation of defendant's attorney-client privilege occurred. Because the record does not demonstrate any clear error regarding these findings, we affirm the trial court's denial of defendant's motion to disqualify the prosecutor's office.

Next, defendant argues that the trial court abused its discretion by admitting into evidence, over defense objection, a sawed-off shotgun that was not used in the charged robbery. The decision whether to admit evidence is within the sound discretion of the trial court. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995). This Court will find an abuse of discretion only when an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made. *Id.* At trial, a prosecution witness attributed ownership of the shotgun to defendant and testified that the barrel was sawed off shortly before the robbery. The witness further testified that, after the crime, defendant returned to his residence and hid the shotgun stock in the ceiling. Last, the prosecution introduced evidence that the gun's barrel was seized from the floor of the vehicle that was identified as the "getaway" car after the crime. Because the shotgun was probative of defendant's participation in the crime and of his conspiracy to commit it, the evidence was relevant and not unduly prejudicial. See, e.g., *People v Oswald (After Remand)*, 188 Mich App 1, 8; 469 NW2d 306 (1991). Therefore, we hold that the trial court did not abuse its discretion in admitting the evidence at trial.

Next, defendant argues that the trial court violated his right to confrontation and a fair trial by effectively prohibiting him from cross-examining a primary prosecution witness about her admitted use of crack cocaine. The court ruled that it would permit defendant to question the witness regarding crack, but that if defendant did so, then the door would be opened to plaintiff's introduction of evidence concerning defendant's alleged use of crack. As a result, both parties agreed not to raise the issue. Evidence of drug addiction at or near the time of a charged theft offense may be relevant and admissible as proof of motive; the legal relevance of drug addiction to motive for a theft offense depends on a showing that the defendant was addicted at or near the time of the offense and was therefore compelled to obtain the drug and lacked sufficient income from legal sources to sustain his habit. *People v Jones*, 119 Mich App 164, 168; 326 NW2d 411 (1982). In this case, the prosecution offered evidence of defendant's use of crack and the testimony of a witness that she was addicted to crack, that she and defendant used crack over a twelve-day spree preceding the robbery, and that they stopped only because their money ran out. Therefore, evidence of defendant's drug addiction is relevant and admissible evidence of defendant's motive to commit the robbery in this case. Accordingly, the trial court neither violated defendant's right to confrontation nor denied his right to a fair trial by conditioning defendant's cross-examination of the witness about her drug addiction on the prosecution's examination of defendant about defendant's own drug addiction.

Next, defendant argues that he was denied the effective assistance of counsel because his trial attorney failed to challenge the legality of his arrest and the admission of his post-arrest statements. However, defendant's argument is without merit because the record reveals that the police obtained a search warrant for the motel room in which defendant was staying and that the police had probable cause to detain defendant after they entered. See *People v Champion*, 452 Mich 92, 115; 549 NW2d 849 (1996) ("A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment."). Because defendant's arrest was proper, defense counsel's failure to challenge the legality of the arrest and the admission of the post-arrest statements does not constitute ineffective assistance of counsel depriving defendant of a fair trial. See generally *People v Mitchell*, 454 Mich 145; 560 NW2d 600 (1997).

Last, defendant argues that he is entitled to a new trial because the prosecution intimidated a witness and solicited perjured testimony from her. We have reviewed defendant's allegation and find it unpersuasive. See, e.g., *People v Canter*, 197 Mich App 550, 559-560; 496 NW2d 336 (1992) ("where newly discovered evidence takes the form of recantation testimony, it is traditionally regarded as suspect and untrustworthy").

Affirmed.

/s/ Henry William Saad

/s/ Kathleen Jansen

/s/ Joel P. Hoekstra