

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC A. GALLANT,

Defendant-Appellant.

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UNPUBLISHED

April 27, 1999

No. 207172

Oakland Circuit Court

LC No. 97-152210 FH

Before: Saad, P.J., and Murphy and O'Connell, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree child abuse, MCL 750.136b(3); MSA 28.331(2)(3). The trial court sentenced defendant as an habitual offender, third offense, MCL 769.13; MSA 28.1085, to two to four years' imprisonment. Defendant now appeals as of right. We affirm.

On July 19, 1996, Rochelle Edwards returned to the apartment that she shared with her daughter and her daughter's boyfriend, defendant, to discover her five-and-one-half-month-old grandson pale and unresponsive. The baby had been left in defendant's care for approximately fifteen minutes while Edwards drove her daughter to work. The baby vomited, could not hold his head up, and started to cry, whine, and shake. In the weeks before this incident, he had appeared very healthy and happy. Defendant told Edwards that he did not know what happened to cause the baby's illness.

The baby was transported to St. John's Hospital where he underwent x-rays, CAT scans, and MRIs. Pediatric Neurologist Dr. Hugh Walker testified that the CAT scans showed blood between the posterior hemispheres of the baby's brain that, he opined, resulted from shaking trauma. Upon examination, Dr. Walker observed signs of limpness, hypotonia, and three bruises on the baby's back that, he surmised, were caused by holding the baby forcefully. Diagnostic Radiologist Dr. Richard Chesbrough testified that, after reviewing the x-rays and CAT scans, he suspected that the bleeding along the middle and top sections of his brain was caused by non-accidental trauma, zero to six days before the CAT scan. Defense expert, Dr. Fred Lamb, testified the trauma causing the injuries could have occurred up to four days prior to the time the baby exhibited signs of illness.

Defendant first argues that the trial court abused its discretion in sustaining the prosecutor's objections to Dr. Lamb's testimony on the basis that the testimony was non-responsive to questions asked by defense counsel during direct examination. Defendant claims that only defense counsel had the right to object on that basis. We disagree. The decision whether to admit or exclude evidence is within the discretion of the trial court and will not be disturbed on appeal absent a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998).

It is the duty of the trial judge to control trial proceedings and to limit the introduction of evidence to relevant and material matters while considering the need to expeditiously and effectively ascertain the truth of the matters involved. MCL 768.29; MSA 28.1052; *People v Ullah*, 216 Mich App 669, 674; 550 NW2d 568 (1996). Specifically, the trial court has discretion to determine preliminary questions concerning the admissibility of evidence. MRE 104; *Starr*, *supra* at 497-498.

Given the lengthy, technical answers offered by Dr. Lamb, we conclude that the trial court acted within its discretion in sustaining the prosecutor's objections. The record establishes that Dr. Lamb's responses to questions by defense counsel were lengthy and outside the scope of what was being asked. The trial court acted properly in refocusing Dr. Lamb's testimony to issues related to the questions posed by defense counsel.

To the extent that defendant argues that the trial court erred when it excluded portions of Dr. Lamb's testimony under MRE 703, defendant's argument is unpreserved for our review. Defendant claims that the trial court failed to determine whether studies relied upon by Dr. Lamb were admissible and, instead, simply sustained the prosecutor's objection to the testimony referencing the studies. However, defendant's trial counsel failed to submit an offer of proof regarding the substance of the studies that Dr. Lamb referenced. Further, the content or conclusions drawn in the studies were also never fully discussed at trial and are not otherwise apparent from the record. Thus, because this Court can only speculate as to whether relevant evidence was excluded from trial, we can not properly address defendant's contention that the trial court erred in precluding Dr. Lamb from referencing the studies. See *People v Arenda*, 416 Mich 1, 14; 330 NW2d 814 (1983).

Defendant also argues that the trial court abused its discretion in excluding relevant testimony regarding the baby's mother's drug use. Defendant claims that testimony by medical experts established that the baby's injuries may have occurred prior to July 19, 1996, and thus, the injuries may have been caused by a person other than defendant. Defendant asserts that the trial court improperly excluded the testimony of Susan Voytal of Child Protective Services regarding whether her investigation focused on family members' use of illicit drugs. We disagree.

Evidence is relevant if it has any tendency to make the existence of a fact that is of consequence to the action more probable or less probable than it would be without the evidence. MRE 401; *People v Crawford*, 458 Mich 376, 388; 582 NW2d 785 (1998). However, even if relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, misleading the jury, undue delay, waste of time, or needless presentation of cumulative evidence. MRE 403; *People v Mills*, 450 Mich 61, 74-75; 537 NW2d 909 (1995).

On this record, we cannot say that the trial court abused its discretion in not allowing Voytal to testify regarding her investigation of drug use among the victim's family members. We conclude that, had Voytal been permitted to respond to the questions regarding drug use by a family members, her answer would not have had a tendency to prove that the baby's injuries were a result of such drug use. Therefore, we conclude that the trial court did not abuse its discretion in sustaining the prosecutor's objection to Voytal's testimony.

To the extent that defendant argues that Brandy Powers' testimony was improperly excluded, defendant's argument is unpreserved for our review. At trial, defense counsel conceded that Powers' reference to the baby's mother's drug use was irrelevant and stipulated to strike her testimony. We will not consider an issue raised for the first time on appeal absent plain error, *People v Grant*, 445 Mich 535, 551-552; 520 NW2d 123 (1994), which does not appear on this record.

Affirmed.

/s/ Henry William Saad

/s/ William B. Murphy

/s/ Peter D. O'Connell