

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DEXTER LANEER LEE, a/k/a DEXTER LANEAR  
LEE,

Defendant-Appellant.

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UNPUBLISHED

July 23, 1999

No. 203863

Genesee Circuit Court

LC No. 96-054540 FH

Before: Holbrook, Jr., P.J., and Zahra and J.W. Fitzgerald,\* JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions of carrying a concealed weapon, MCL 750.227; MSA 28.424, and possession of a firearm by a felon, MCL 750.224f; MSA 28.421(6). We affirm.

Defendant first argues that his constitutional right of confrontation was infringed when the trial court limited cross-examination of a key prosecution witness. During trial, defense counsel attempted to ask Officer Goliday, an off-duty police officer who shot defendant at the crime scene, what the consequences for him would have been if Internal Affairs had determined that his shooting of defendant was a “bad shoot.” The prosecutor objected to the question and the trial court ruled that the question was not relevant. Defendant asserts that the question was relevant to whether Officer Goliday was biased or whether he had fabricated the story about defendant possessing a gun.

Even assuming, as defendant argues, that defendant’s inability to fully cross-examine Officer Goliday as to the issues of bias or fabrication was an error of constitutional dimension, we would nonetheless conclude that its exclusion and its effect upon the jury’s verdict constituted error harmless beyond a reasonable doubt. *People v Kelly*, 231 Mich App 627, 644; 588 NW2d 480 (1998). See also *Delaware v Van Arsdall*, 475 US 673, 684; 106 S Ct 1431; 89 L Ed 2d 674 (1986) (addressing the relationship between the harmless-error standard and a defendant’s alleged violation of his Sixth Amendment right of confrontation). Here, although Officer Goliday was a key prosecution witness, his

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\* Former Supreme Court justice, sitting on the Court of Appeals by assignment.

testimony regarding defendant's possession of a gun was merely cumulative of the testimony of other witnesses at trial who also saw defendant with a gun.

Defendant next argues that the trial court erred in refusing to suppress a statement made by defendant to a police investigator, which was obtained while defendant was in the hospital and without being advised of his constitutional rights. We disagree. In reviewing suppression hearing findings, this Court will defer to the trial court's findings of historical fact, absent clear error. *People v Cheatham*, 453 Mich. 1, 29-30 (Boyle, J), 44 (Weaver, J), 551 NW2d 355 (1996). The ultimate question whether a person was "in custody" for purposes of *Miranda* warnings is a mixed question of fact and law, which must be answered independently by the reviewing court after review de novo of the record. *People v Mendez*, 225 Mich App 381, 382; 571 NW2d 528 (1997).

Here, although defendant was interrogated while in his hospital bed, we agree with the trial court's conclusion that defendant was not in custody, and, therefore, not entitled to be advised of his constitutional rights. *Id.* At the time the interview took place, defendant was neither under arrest nor were guards placed outside his room. The investigating officer, who was dressed in plain clothes, described the atmosphere in the hospital room as "very casual" and the interview as a "free-flow narrative." The interview only lasted six or seven minutes, and afterward the officer informed defendant that he would be contacted after he was released from the hospital. Contrary to defendant's argument, the mere fact that defendant may have been physically unable to leave the room because of his injury does not mean that he was subject to custodial interrogation. Accordingly, given the totality of the circumstances, we find no error in the trial court's denial of defendant's motion to suppress.

Lastly, we find no merit to defendant's assertion that he was denied a fair trial on the basis of cumulative error. *Kelly, supra* at 646.

Affirmed.

/s/ Donald E. Holbrook, Jr.  
/s/ Brian K. Zahra  
/s/ John W. Fitzgerald