

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC D. HARRIS,

Defendant-Appellant.

UNPUBLISHED

April 25, 2000

No. 211360

Wayne Circuit Court

LC No. 97-006373

Before: Collins, P.J., and Neff and Smolenski, JJ.

MEMORANDUM.

Defendant appeals as of right his conviction after a jury trial of assault with intent to commit great bodily harm, MCL 750.84; MSA 28.279, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

The charges against defendant arose out of an altercation that occurred during a drag race. The victim testified that after the initial confrontation, defendant returned to his car, obtained a gun, and hit her with it. He then proceeded to fire multiple shots, one of which hit her. In a statement to police, defendant admitted striking the victim with his gun, but maintained that he only began shooting when someone else shot at him. Defendant denied shooting at the victim.

On appeal, defendant argues that the trial court abused its discretion in allowing a police officer to testify that suspects often minimize their involvement in a crime in their confessions. This testimony was elicited in response to cross-examination in which it was pointed out that defendant did not admit shooting at a specific individual.

A trial court's evidentiary rulings are reviewed for abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995). MRE 701 provides for the admissibility of opinion testimony by lay witnesses:

If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally

based on the perception of the witness and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue.

Here, the officer's opinion that criminal suspects tend to minimize their involvement in a confessed crime was rationally based on his perceptions and was helpful to a clear understanding of defendant's statement. The court did not abuse its discretion in allowing the testimony.

Even if the evidence was improperly admitted, defendant was not prejudiced by the error. If a preserved error is not constitutional in nature, the Court must determine if it is harmless. *People v Graves*, 458 Mich 476, 482; 581 NW2d 229 (1998). An appellate court will not reverse a conviction if it is highly probable that the nonconstitutional error did not affect the judgment. *Id.* at 483. Here, the evidentiary issue had no impact on the outcome of the case. The victim testified that she was shot by defendant, and her testimony was corroborated by other witnesses. The fact that defendant's statement may or may not have minimized his involvement in the case had no impact on the outcome, given the direct testimony that defendant fired at the victim.

Affirmed.

/s/ Jeffrey G. Collins

/s/ Janet T. Neff

/s/ Michael R. Smolenski