

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT BROCK,

Defendant-Appellant.

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UNPUBLISHED

July 21, 2000

No. 210722

Wayne Circuit Court

Criminal Division

LC No. 97-003614

Before: Murphy, P.J., and Collins and Owens, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to rob while armed, MCL 750.89; MSA 28.284, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to a term of seven to twenty years' imprisonment for the assault with intent to rob conviction and a consecutive two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first contends that the court erred in excluding the testimony of the police officer who took a statement from the complainant while the complainant was in the hospital. We review a trial court's decision whether to admit evidence for an abuse of discretion. *People v Nelson*, 234 Mich App 454, 460; 594 NW2d 114 (1999). 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. *Id.*

Generally, relevant evidence is admissible. MRE 402. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. MRE 401.

Defendant contends that the excluded testimony was relevant to show that the complainant was lying about the alleged crime. While we agree that evidence suggesting that a victim is lying is relevant, *People v Mills*, 450 Mich 61, 72; 537 NW2d 909 (1995), the testimony that defendant sought to elicit concerned relatively minor points in the complainant's testimony and was not reasonably likely to have affected the jury's decision whether to believe that testimony. Moreover, defendant did cross-examine

the complainant regarding his statement and raised questions of credibility at that point. Accordingly, we conclude that any error in the court's refusal to admit the officer's testimony was harmless. See *People v Lukity*, 460 Mich 484, 497; 596 NW2d 607 (1999).

Defendant also contends that the court improperly restricted counsel's cross-examination of the police officer who conducted the search of the crime scene. The right of cross-examination is not without limits; neither the Confrontation Clause nor due process confers an unlimited right to cross-examine on any subject. *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). The right of cross-examination does not include a right to cross-examine on irrelevant issues and may bow to accommodate other legitimate interests of the trial process. *Id.* Trial judges retain wide latitude to impose reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant. *Id.* Whether the trial court has properly limited cross-examination is reviewed for an abuse of discretion. *People v Minor*, 213 Mich App 682, 684; 541 NW2d 576 (1995).

Here, the trial court did not abuse its discretion in precluding further inquiry concerning the scope of the officer's investigation of the crime scene. Defendant had already elicited that the officer had failed to find a bullet casing when he searched the scene. Further, the officer's testimony admitting that it was possible that a bullet casing was present and that he missed it equally suggested that it was possible that he didn't miss anything. Because any further exploration of probabilities was marginally relevant, at best, the trial court did not abuse its discretion in precluding further inquiry in that regard.

Next, defendant argues that the trial court gave an erroneous instruction on aiding and abetting. Because defendant failed to object to the trial court's instructions, our review of this issue is limited to a determination whether relief is necessary to avoid manifest injustice. *People v Torres (On Remand)*, 222 Mich App 411, 423; 564 NW2d 149 (1997). We review instructions in their entirety to determine whether error requiring reversal exists. *People v Whitney*, 228 Mich App 230, 252; 578 NW2d 329 (1998). Even if somewhat imperfect, there is no error if the instructions fairly presented the issues to be tried and sufficiently protected defendant's rights. *Id.*

While the court did not instruct the jury strictly in accordance with existing precedent, viewed in context, the court's instruction that the jury must find that defendant intended to help someone else commit the crime essentially directed it to consider whether defendant intended to commit the crime, which is consistent with existing precedent. *People v Wilson*, 196 Mich App 604, 609; 493 NW2d 471 (1992). Thus, the instructions fairly presented to the jury the issues to be tried and sufficiently protected defendant's rights. *Whitney, supra*. Accordingly, this issue does not warrant relief.

Finally, defendant claims that he was deprived of a fair trial because of impermissible vouching by the prosecutor. Defendant did not preserve this issue with an objection to the allegedly improper remarks at trial. Because a curative instruction could have remedied any

prejudice stemming from the prosecutor's remarks, reversal is not warranted. *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

Affirmed.

/s/ Jeffrey G. Collins

/s/ Donald S. Owens