

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RONALD B. JORDAN,

Defendant-Appellant.

UNPUBLISHED

May 11, 2001

No. 219279

Wayne Circuit Court

LC No. 98-10345

Before: Hood, P.J., and Doctoroff and K.F Kelly, JJ.

PER CURIAM.

Defendant was convicted by a jury of voluntary manslaughter, MCL 750.321; MSA 28.553, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to seventeen to twenty-five years for the voluntary manslaughter conviction and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We reverse and remand.

Defendant contends that he was denied a fair trial because the prosecution elicited testimony from a police officer who stated his opinion that another suspect was not involved in the killing. Defendant claims he was unduly prejudiced because the testimony of the officer placed the prestige of the police department behind another suspect's innocence, in direct conflict with the defendant's theory of the case. We agree.

Defendant's fundamental theory at trial was that an individual by the name of Stanley Harper shot and killed the decedent; not defendant. Consistent with this theory, defendant established that the police originally had three suspects: Stanley Harper, an unidentified male suspect, and defendant. However, during direct examination, Officer David Moore testified that although Stanley Harper was *originally* a suspect and indeed questioned by Officer Moore, as a result of further investigation, he conclusively determined that Stanley Moore was not involved in the act resulting in the victim's death. Defendant's trial counsel objected to the prosecutor's line of questioning. The trial court permitted the prosecutor to continue despite defense counsel's objections. The jury ultimately convicted the defendant. The defendant claims that the trial court deprived him of a fair trial. We agree.

The following is the essence of the objected to exchange between the prosecutor and Officer Moore that defendant claims constitutes reversible error:

[By the Prosecutor]:

Q. And after you took the statement from [Stanley Harper] was he charged?

[By Officer Moore]

A: No he wasn't.

Q: How come?

A: *Because he was not involved. He was not involved with the act of which included the fatal shooting of [decedent].* [Emphasis added].

Q: And that was your professional opinion?

A: Exactly.

Q: Based on what?

A: On my investigation.

Q: *And based on what witnesses?* [Emphasis added.]

A. *What the witnesses said, the entire investigation* with the witnesses had already told me what happened. His statement was consistent with what the people that have appeared on the witness stand today and testified. [Emphasis added.]

Q: Who do you believe was responsible for the killing of Cedric -----

The Court: Wait a minute.

Defense Counsel: Objection.

Q: Who did you arrest for it? I won't ask it then, withdraw the question.

Issues pertaining to the admissibility of evidence lay within the sound discretion of the trial court and will not be disturbed absent a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). And, it is equally clear that, "[a]s trier of fact, the jury is the final judge of credibility." *People v Lemmon*, 456 Mich 625, 637; 576 NW2d 129 (1998) (citation omitted).

In the case at bar, the trial court permitted testimony concerning Officer Moore's professional opinion that based on the witnesses' interviewed throughout the course of "[t]he entire investigation" that one of the original suspects, namely Stanley Harper, was "[n]ot involved." Just because Officer Moore believed the witnesses' he interviewed during the course of his investigation does not mean that the ultimate finder of fact, i.e. the jury, would also believe that they were credible witnesses. By eliciting Officer Moore's professional opinion that the witnesses interviewed were so credible that Officer Moore could thereby conclude that Stanley Harper was not at all involved in the fatal shooting, the prosecutor effectively denied the defendant the ability to put forth a viable defense, especially in light of the defendant's theory of the case.

The instant case is much like the situation presented in *People v Lucas*, 138 Mich App 212; 360 NW2d 162 (1984), wherein our court stated:

Appellant contends that the testimony of Officer Sanborn, that he has investigated George Thompson's alibi and had not sought a warrant for that reason, was inadmissible hearsay. We believe it was. The sole purpose of the question was to place before the jury the fact that the alibi of Mr. Thompson had been verified by the witnesses. The officer would not have been permitted to testify to what the witnesses had said directly and the effect of this series of questions was to place that information before the jury, buttressed by the conclusions of the police officer that he believed Thompson's alibi. [*Lucas, supra* at 220.]

Thus, the court recognized that "[t]he right of the defendant to have the jury determine the credibility of [the other suspect's] alibi witnesses, *uninfluenced by the opinions of the deputy sheriff*, was a very substantial right." *Lucas*, at 223. [Emphasis added]. The court held that the deputy sheriff's determination as to the alibi witness's ultimate veracity which effectively deprived defendant of a fair trial and similarly deprived the defendant's right to confront the witnesses brought against him, constituted "[c]lear error requiring reversal." *Id.* at 224.

Similarly, in the case at bar, defendant has a right to have the jury scrutinize the witnesses' demeanor and independently determine whether those witnesses are credible uninfluenced by Officer Moore's professional opinion as to the veracity of their statements. Having Officer Moore deliver his professional opinion as to the credibility of the witnesses involved in the investigation usurps the jury's entire function and constitutes plain error requiring reversal. See *Lucas*, at 223.

For the foregoing reasons, we hold that the trial court abused its discretion when it permitted Officer Moore to testify as to the witnesses' ultimate credibility which effectively deprived defendant of a fair trial by an unbiased and impartial decision maker.

In light of this result, it is not necessary to address the other two issues raised by defendant.

Reversed and remanded for a new trial.

/s/ Harold Hood

/s/ Martin M. Doctoroff

/s/ Kirsten Frank Kelly