

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LAMAR RAY JONES,

Defendant-Appellant.

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UNPUBLISHED

January 7, 2010

No. 285170

Wayne Circuit Court

LC No. 07-013490-FC

Before: Servitto, P.J., and Fort Hood and Stephens, JJ.

PER CURIAM.

Defendant appeals by right his jury trial convictions of first-degree premeditated murder, MCL 750.316, possession of a firearm by a felon, MCL 750.224f, and possession of a firearm during the commission of a felony, MCL 750.227b. He was sentenced to life imprisonment for the first-degree murder conviction, and to a concurrent sentence of 36 months to 5 years' imprisonment for the felon in possession conviction. He was also sentenced to two years' imprisonment (with 218 days' credit) for the felony-firearm conviction, to be served consecutive to but preceding his other sentences. Because there was no violation of defendant's constitutional right to present a defense, we affirm.

On June 11, 2007, at approximately 12:45 a.m., four young men, Marcell Vallie, Josh Dotson, and brothers, Tremain and Terrence Peterson, drove to a Citgo gas station in River Rouge. Terrence went inside the store, and the other three men remained in the car, which was owned and operated by Vallie. Shortly thereafter, defendant, whom Vallie had known for a long time, pulled into the parking lot driving a white Ford Taurus. The victim, Kourtney Duffie, then pulled into the parking lot and parked. Defendant pulled his car forward so that his driver side was next to the driver side of Duffie's car. He withdrew a gun and fired it approximately nine times at Duffie's car, mortally wounding him. Vallie, Dotson, Tremain and Terrence then drove from the scene to Vallie's house and did not report their observations to the police for several weeks. On or about July 19, 2007, they identified defendant as the shooter. Defendant was eventually arrested and charged.

Defendant argues on appeal that the trial court violated his constitutional right to present a defense when it prevented him from fully cross-examining Vallie, Tremain, and Dotson about

their marijuana consumption on the evening of the shooting.<sup>1</sup> This Court reviews a trial court's decision to limit cross-examination for abuse of discretion. *People v Minor*, 213 Mich App 682, 684; 541 NW2d 576 (1995). Abuse of discretion exists if the trial court's decision falls outside the principled range of outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). "Constitutional claims of due process violations are reviewed de novo." *People v Hill*, 282 Mich App 538, 540; 766 NW2d 17 (2009), *vacated in part on other grounds*, \_\_\_ Mich \_\_\_, 773 NW2d 257 (2009).

Defendant has a state and federal constitutional right to present a defense, which includes the right to cross-examine a state's witness to challenge their testimony. *People v Hayes*, 421 Mich 271, 278-279; 364 NW2d 635 (1984), quoting *Washington v Texas*, 388 US 14, 19; 87 S Ct 1920; 18 L Ed 2d 1019 (1967). This right, which arises from the Sixth Amendment right to confrontation, is not "an unlimited right to admit all relevant evidence or cross-examine on any subject" or "a right to cross-examine on irrelevant issues." *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). It "may bow to accommodate other legitimate interests of the trial process or of society." *Id.* "[T]he scope of cross-examination on matters of credibility is left to the sound discretion of the trial court." *People v Von Everett*, 156 Mich App 615, 623; 402 NW2d 773 (1986). The trial court may "impose reasonable limits on such 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." *Adamski*, *supra* (internal citation omitted).

An eyewitness's drug use and/or intoxication that is contemporaneous with the events he witnessed is relevant on cross-examination as it bears on his ability to recall events accurately. *Hill*, *supra* at 541. Defendant argues on appeal he needed to question Vallie, Tremain, and Dotson about their marijuana use on the evening of the crime because marijuana impairs memory and cognitive function, and calls into question the credibility of their testimony. The drug use at issue here, however, occurred after the shooting, and is less relevant than defendant suggests. Further, defendant successfully impeached the credibility of eyewitnesses Tremain and Dotson by showing they were under the influence of marijuana *at the time* of the shooting. If he wanted the jury to question their ability to accurately recall the shooting, his goal was achieved. Defendant has not articulated any reason on appeal as to how additional marijuana consumption later that evening somehow hurts their credibility such that the failure to present the evidence denied him his rights. See, *Id.*

Although defendant was not permitted to cross-examine the witnesses on the precise issue described above, neither due process nor the Confrontation Clause mandates that he should have been given such permission. *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992); see also *People v Bushard*, 444 Mich 384, 391; 508 NW3d 745 (1993) (Boyle, J.), quoting *Delaware v Fensterer*, 474 US 15, 20; 106 S Ct 292; 88 L Ed 2d 15 (1985) ("[T]he Confrontation Clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish" (emphasis in original)). Whether to allow cross-examination on a subject that, at best, was

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<sup>1</sup> The trial court sustained the prosecutor's objection, which was based on relevancy.

marginally relevant to general credibility, was a question within the sound discretion of the trial court. *Von Everett, supra*. The trial court's decision clearly fell within the principled range of outcomes, and did not constitute an abuse of its discretion. *Babcock, supra*.

Affirmed.

/s/ Deborah A. Servitto

/s/ Karen M. Fort Hood

/s/ Cynthia Diane Stephens