

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CURTIS BERNARD HARRIS,

Defendant-Appellant.

UNPUBLISHED

August 1, 1997

No. 185525

Wayne Circuit Court

LC No. 77-704005 FM

Before: Murphy, P.J., and Michael J. Kelly and Gribbs, JJ.

PER CURIAM.

Defendant appeals by leave granted his 1977 convictions by jury of first-degree felony murder, MCL 750.316; MSA 28.548, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). The trial court sentenced defendant to consecutive mandatory terms of two years' imprisonment for felony-firearm and life without parole for first-degree murder. We affirm.

In the early morning hours of January 18, 1977, Rufus Lee Sizemore, a cab driver, was murdered in the parking lot of the Whitney Young Apartments located in Inkster, Michigan. At approximately 1:45 a.m., Sizemore picked up two passengers at Metro Airport. The passengers, a man and a woman, initially entered another cab and requested a ride to Inkster, but were told that they had to ride in Sizemore's cab because his was the first in line at the taxi stand. Another cab driver, Troy Adkins, opened the door of Sizemore's cab for the passengers. Sizemore then entered his cab and departed. Six hours later, police officers discovered Sizemore's body slumped over the steering wheel of his cab in the parking lot of the Whitney Young Apartments. He died from a single gunshot wound to the head. At trial, Adkins stated that he was "80 percent positive" that defendant was the male passenger, but acknowledged that he did not identify defendant at the preliminary examination.

In exchange for the dismissal of murder charges against her, Lucinda Selma, a prostitute, testified against defendant. According to Selma, defendant and David Garrison picked her up at approximately 1:00 a.m. and drove her to Metro Airport under the pretext that they knew a man who desired her services but wished to be discrete. Garrison dropped defendant and Selma off at the airport and they entered the lobby. After a few minutes, defendant and Selma left the lobby and entered

a taxi cab that was waiting in front of the building. Upon being told that they would have to ride in the first cab in the line at the taxi stand, defendant and Selma entered Sizemore's cab and defendant instructed Sizemore to drive them to the Whitney Young Apartments. Sizemore drove defendant and Selma to their requested destination and stopped the car at the rear of the complex. According to Selma, she had just begun to leave the cab when she heard a gunshot and then defendant pulled her back into the car. Selma observed defendant bend forward into the front seat and retrieve a small coin purse. After leaving the cab, they met Garrison, who was waiting nearby, and he drove them from the complex. They eventually picked up Debra Wyatt and spent the next day in a motel room.

Defendant contends that the trial court abused its discretion in limiting his cross-examination of Selma and Adkins. We disagree. The scope of cross-examination is a matter left to the discretion of the trial court, with due regard for a defendant's constitutional rights. *People v Blunt*, 189 Mich App 643, 651; 473 NW2d 792 (1991). A defendant does not have a constitutional right to admit all relevant evidence or cross-examine on any subject, and the trial judge may impose reasonable limits on cross-examination to accommodate legitimate interests so long as the defendant is provided a reasonable opportunity to test the truth of a witness' testimony. *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). We review the trial court's control over cross-examination for an abuse of discretion. *Blunt, supra* at 651.

Upon review of the record, we find that the trial court did not abuse its discretion or infringe on defendant's right of confrontation in controlling his cross-examination of Selma and Adkins. The trial court properly limited repetitive questions and restricted defendant's questioning on marginally relevant matters. *Adamski, supra* at 138. Defendant was afforded a reasonable opportunity to test the witnesses' credibility and introduce facts from which the jury might infer bias and prejudice. *People v Cunningham*, 215 Mich App 652, 657; 546 NW2d 715 (1996). Nor do we think that the trial court's questions and comments made before the jury indicate a piercing of the veil of impartiality. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995).

Next, defendant contends that he was denied a fair trial by the trial court's jury instructions. We disagree. We review jury instructions in their entirety, and even if somewhat imperfect, reversal is not required if the instructions presented the issues to be tried and sufficiently protected the defendant's rights. *People v Ullah*, 216 Mich App 669, 677; 550 NW2d 568 (1996). In this case, the court adequately instructed the jury regarding the elements of felony-firearm by reading the statute. *People v Hunt*, 120 Mich App 736, 741-742; 327 NW2d 547 (1982). The court also adequately informed the jurors that they should carefully consider and weigh Selma's testimony in light of the consideration she received for testifying against defendant. *People v McCoy*, 392 Mich 231, 236-237; 220 NW2d 456 (1974). Given that this case turned on the jury's evaluation of Selma's credibility and she clearly testified that defendant shot and robbed the victim, the court's incomplete instructions on aiding and abetting and manslaughter were not prejudicial. *People v Woods*, 416 Mich 581, 600-601; 331 NW2d 707 (1982). After initially instructing on both premeditated and felony murder, the trial court directed the jurors to disregard its earlier instructions and properly instructed them on felony murder and the predicate felony, robbery. Upon review of the instructions as a whole in this case, we find that, while not ideal, they presented the issues to be tried and protected defendant's rights.

Defendant also claims that the trial court erred by reading to the jury as part of the instructions, the order of nolle prosequi entered on behalf of Selma. Defendant argues that this order bolstered the credibility of Selma. We disagree. While the trial court's action was not ideal, we do not think defendant was denied a fair trial. Selma testified at trial that she was originally charged in this crime but that those charges were dropped in exchange for her testimony. In addition, the trial court informed the jury that the instructions were not to be considered evidence. Furthermore, the order was read in the context of elaborating on the instruction that the jury was to consider any "inducement offered which may have caused [Selma] to testify falsely." The jury was also instructed that if it believed Selma was an accomplice it must examine her "testimony closely and accept it only with caution and care." We find no error requiring reversal.

Defendant also takes issue with the trial court's conducting of voir dire. The scope of voir dire is within the trial court's discretion, and this Court reviews the trial court's oversight for an abuse of discretion. *People v Harrell*, 398 Mich 384, 388; 247 NW2d 829 (1976). Upon review of the record, we find that the trial court did not abuse its discretion in conducting voir dire because the questioning was sufficient to allow counsel to intelligently challenge jurors for cause and exercise peremptory challenges. *People v Tyburski*, 445 Mich 606, 619; 518 NW2d 441 (1994) (plurality opinion); *People v Harrell*, 398 Mich 384, 388; 247 NW2d 829 (1976). Furthermore, we are of the opinion that the court adequately informed the jurors about the relevant legal principles when instructing them on the law. See *People v Lambo*, 8 Mich App 320, 325; 154 NW2d 583 (1967).

Defendant contends that the trial court abused its discretion in admitting the portion of Wyatt's preliminary examination testimony where she relates the substance of a conversation among defendant, Garrison, and Selma in which they described the murder. We disagree. The trial court permitted the reading of Wyatt's testimony from the preliminary examination upon finding that the prosecutor exercised due diligence in attempting to produce Wyatt to testify at trial. The court also refused to strike the portion of the testimony in which Wyatt related the conversation at the motel. The testimony does not reflect which statements were made by defendant, and Wyatt did not detail the circumstances surrounding the making of the statements. Wyatt repeatedly stated that, other than a comment by Garrison about a gun, she could not remember who said what during the conversation. Defendant argues that reversal is required because this testimony was improperly admitted hearsay. We disagree. While the statements may have been hearsay, they, for the most part, simply corroborated Selma's testimony and other testimony that placed defendant in the victim's cab. Wyatt's testimony never did identify defendant as the shooter. In our opinion, the testimony regarding the conversation at the motel was cumulative to other competent evidence and did not prejudice defendant's trial. We will not reverse. See *People v Slaton*, 135 Mich App 328, 338; 354 NW2d 326 (1984); *People v Vargas*, 50 Mich App 738, 742; 213 NW2d 848 (1973).

Finally, defendant contends that the trial court abused its discretion in ruling that his prior convictions could be used for impeachment purposes in the event he testified at trial. We disagree. This Court reviews a trial court's decision to allow impeachment by evidence of a prior conviction for an abuse of discretion. *People v Hicks*, 185 Mich App 107, 110; 460 NW2d 569 (1990). At the time of defendant's trial, impeachment by means of prior convictions was controlled by MCL 600.2159;

MSA 27A.2159. *People v Jackson*, 391 Mich 323; 217 NW2d 22 (1974). While impeachment by evidence of conviction of a crime is generally admissible under the statute, the trial court may exercise its discretion to exclude reference to a defendant's prior criminal record. *Id.* at 336. Here, the trial court complied with *Jackson, supra*, by positively indicating and exercising its discretion. *People v Cherry*, 393 Mich 261, 261; 224 NW2d 286 (1974). We find no abuse of discretion.

Defendant has raised several arguments within each separate issue on appeal. While our opinion may not have addressed each argument directly, we have considered all of defendant's arguments and do not feel reversal is required.

Affirmed.

/s/ William B. Murphy

/s/ Michael J. Kelly

/s/ Roman S. Gibbs