STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RUTH MARYANN FLOYD,

Defendant-Appellant.

UNPUBLISHED
September 26, 2000

No. 219006
Washtenaw Circuit Court
LC No. 98-009897 FC

Before: Talbot, P.J., and Hood and Gage, JJ.

PER CURIAM.

After a jury trial, defendant was convicted of first-degree 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 life imprisonment for the first-degree murder conviction, and a consecutive two-year term for the felony-firearm conviction. Defendant appeals as of right. We affirm.

Defendant first contends that the trial court violated her constitutional right to confront prosecution witness Lisa Stafford, US Const, Am VI; Const 1963, art 1, § 20, preventing adequate questioning regarding Stafford's motive to testify favorably to the prosecution. Defendant wished to cross examine Stafford regarding "the degree of jeopardy Stafford felt in connection with" a police investigation concerning the molestation of Stafford's children, which questioning would have established "that Stafford was willing to take any steps necessary to insure that she would not be charged in the [molestation] case, and that included lying on the stand when . . . called to testify against [defendant]."

This Court reviews for an abuse of discretion a trial court's decision to limit a witness' cross examination. *People v Minor*, 213 Mich App 682, 684; 541 NW2d 576 (1995).

> A primary interest secured by the Confrontation Clause is the right of cross-examination. The right of cross-examination is not without limit; neither the Confrontation Clause nor due process confers an unlimited right to admit all relevant evidence or cross-examine on any subject. 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 or of society. "[T]rial judges retain wide latitude insofar as the Confrontation Clause is concerned to 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." Defendants are, however, guaranteed a reasonable opportunity to test the truth of a witness' testimony. [*People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993) (citations omitted).]

This Court also has recognized that cross examination of a witness' involvement in another case can be limited, particularly when the defendant otherwise has a full opportunity on cross examination to explore any promises of leniency, immunity or other agreements, *People v Madden*, 55 Mich App 363, 365-367; 222 NW2d 245 (1974), or when defense counsel elicits substantial evidence adversely affecting the witness' credibility. *People v Von Everett*, 156 Mich App 615, 623-624; 402 NW2d 773 (1986).

In this case, the trial court prevented defendant from asking Stafford detailed questions concerning her personal involvement in the molestation of her children. Defendant otherwise was afforded great latitude, however, in cross examining Stafford. Defendant established that Stafford was involved in a police investigation concerning the molestation of her two children and that on several occasions the police interviewed Stafford. Stafford stated that in connection with this investigation ten other people went to prison. In response to the prosecutor's questions, Stafford denied having a plea agreement and denied seeking or receiving any promise of leniency for testifying against defendant. Furthermore, defense counsel demonstrated to the jurors that Stafford suffered memory problems, impeached Stafford with her preliminary examination testimony, and also established during another witness' cross examination that Stafford had a reputation for being untruthful. In light of this evidence reflecting defendant's reasonable opportunity to probe Stafford's credibility before the jury,[1] we cannot conclude that the trial court's decision to preclude further questioning regarding the specific allegations of Stafford's child abuse represented "perversity of will, defiance of judgment, [or] the exercise of passion or bias." *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996); *Adamski, supra*.[2]

---

[1] Defendant also argues that Stafford opened the door to detailed questioning regarding her alleged child abuse by testifying at defendant's preliminary examination, "I figure I'm not gonna lie. I ain't lying about my other case; I'm not gonna lie about this case. So this way, you know, everything's on the up and up." We note that because Stafford did not at trial before the jury likewise allegedly open the door to further questioning, defendant was not entitled to pursue before the jury her desired detailed questioning of Stafford.

[2] Because defendant sought to elicit testimony showing Stafford's bias or interest in testifying for the prosecution, and was not trying to use specific instances of Stafford's conduct to demonstrate her untruthful character, the trial court erroneously relied on MRE 608(b) to limit cross-examination of Stafford. *People v Hall*, 174 Mich App 686, 690-691; 436 NW2d 446 (1989) ("Although, normally, a witness' pending charges may not be used for general impeachment purposes, the fact that a

(continued…)

Defendant next asserts that the trial court erred in admitting into evidence a "voodoo doll," an anatomically correct paper doll smeared with blood and possessing one large and numerous smaller pin holes in its chest area. On the doll someone had written "death to Kim Floyd," the instant victim and defendant's former daughter-in-law. Within eleven hours of the murder, the police seized the doll from the jail cell of defendant's son, and the victim's former husband, T.J. Floyd. We review for an abuse of discretion the trial court's determination to admit this evidence. *People v Gibson*, 219 Mich App 530, 532; 557 NW2d 141 (1996).

Defendant first contends that the doll was irrelevant. In light of the fact that the doll resembling the victim's death by shotgun blast to the chest likely was created prior to the victim's murder, the doll tended to make more likely that defendant premeditated and deliberated the victim's murder, a fact of consequence to the determination of the instant action. MCL 750.316(1)(a); MSA 28.548(1)(a); MRE 401; *People v Crawford*, 458 Mich 376, 388-390; 582 NW2d 785 (1998). Plaintiff offered the doll to show that T.J. Floyd, with whom defendant acknowledged speaking on several occasions during the month before the murder, knew before the murder occurred that defendant planned to kill the victim. Furthermore, the doll's existence and characteristics tended to contradict defendant's theory that she shot the victim in self defense. We therefore conclude that the trial court correctly found the doll relevant according to MRE 401.

Defendant also argues that the doll was highly prejudicial. According to defendant, the jury gave "this evidence an importance entirely out of proportion to its minimally logical effect," "the doll injected unfair emotionalism [negative reaction toward voodoo] into the trial," and the doll misled the jury into attributing to defendant T.J. Floyd's "murderous sentiments" toward the victim. While the doll was prejudicial to the extent that it possessed significant probative value, tending to establish defendant's premeditation, the doll was not unfairly prejudicial. MRE 403; *People v Harvey*, 167 Mich App 734, 745-746; 423 NW2d 335 (1988). It appears unlikely that the jury placed in the doll any undue significance, especially in light of other trial testimony concerning defendant's premeditation, including Stafford's recollections that defendant informed her on the day of the murder that defendant had that day placed in the victim's mailbox a note inviting the victim to defendant's home at 8 p.m., the time of the murder, and defendant's explanation to Stafford that she planned to shoot the victim when she arrived and subsequently place in the victim's hand a knife. *Harvey*, *supra* at 746 ("[T]he idea of prejudice denotes a situation in which there exists a danger that marginally probative evidence will be given undue or preemptive weight by the jury."). Furthermore, we detect no danger that the doll would confuse or mislead the jury, especially considering that defendant had ample opportunity to explain the existence and alleged significance of the doll during closing argument or by calling T.J. Floyd to testify.

(…continued)

prosecution witness has charges pending is particularly relevant to the issue of the witness' interest in testifying and may be admitted for this purpose."). Because, however, the trial court nonetheless appropriately limited the cross examination of Stafford, we will affirm the trial court's ruling. *People v Custer*, ___ Mich App ___; ___ NW2d ___ (2000), slip op at 7 ("[W]e will not reverse a lower court decision that reached the right result, albeit for the wrong reason.").

We therefore conclude that any "unfair emotionalism" injected by the doll did not substantially outweigh the doll's significant probative value. MRE 403.

Defendant additionally objects to the doll on the basis that it constituted inadmissible hearsay and an unfair surprise. Defendant initially objected to the doll's admission as irrelevant and unfairly prejudicial. Defendant objected to the doll as hearsay much later, only after the court already had admitted the doll into evidence, and never asked the trial court to exclude the doll because of unfair surprise. Defendant's failure to timely object on these bases renders our review of these allegations only for manifest injustice. MRE 103; *People v Ramsdell*, 230 Mich App 386, 404; 585 NW2d 1 (1998). In light of the other significant evidence implicating defendant's guilt, we find no manifest injustice arising from the trial court's admission of the doll.[3]

Defendant lastly contends that the trial court erred in excluding an undated letter from T.J. Floyd to the victim, which letter was also seized from Floyd's jail cell shortly after the murder. Defendant claims that although the letter is hearsay it is nonetheless admissible under the state of mind exception to hearsay [MRE 803(3)], the catchall hearsay exception [MRE 803(24)], or the rule of completeness (MRE 106). While defendant asserts that the letter must be considered to establish that T.J. Floyd did not harbor ill will toward the victim, Floyd's state of mind was not in dispute. The prosecutor offered the doll not to show that T.J. Floyd hated the victim, but to establish Floyd's awareness that defendant intended to kill the victim. Because Floyd's alleged desire to reconcile with the victim did not constitute a fact of consequence to the determination of this case, the offered letter was irrelevant, MRE 401, and the trial court therefore properly excluded it. MRE 402.[4]

Affirmed.

/s/ Michael J. Talbot
/s/ Harold Hood
/s/ Hilda R. Gage

---

[3] We note with respect to defendant's unfair surprise contention that defense counsel on the record acknowledged his awareness of and familiarity with the doll. Concerning defendant's hearsay argument, we note that the doll was not offered for the truth of the matter asserted. MRE 801(c).

[4] Because the letter was irrelevant under MRE 402, it was inadmissible irrespective whether it qualified as a hearsay exception.