

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL ANDERSON,

Defendant-Appellant.

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UNPUBLISHED

December 26, 2000

No. 217952

Wayne Circuit Court

Criminal Division

LC No. 98-007816

Before: Saad, P.J., and White and Hoekstra, JJ.

PER CURIAM.

Defendant was convicted by jury of second-degree murder, MCL 750.317; MSA 28.549, and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b; MSA 28.424(2). Defendant was sentenced to the mandatory two years' imprisonment for the felony-firearm conviction and to a consecutive term of thirteen to twenty-five years' imprisonment for the second-degree murder conviction. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court abused its discretion in refusing to allow the testimony of a police officer involved in the investigation of a previous incident in 1994 where defendant and his sister were shot by the decedent's cohort and relative-by-marriage, Avion Mosley. Defendant's offer of proof established that this testimony would have consisted of statements made by defendant to this police officer that defendant was fearful of decedent and the Mosley family. The trial court excluded the proffered evidence on the ground that it was inadmissible hearsay and, in addition, it was irrelevant.

Whether evidence is admissible is within the trial court's discretion; this Court will reverse only where there is a clear abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). "An abuse of discretion exists when the court's decision is so grossly violative of fact and logic that it evidences perversity of will, defiance of judgment, and the exercise of passion or bias." *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996) (citations omitted).

Even assuming that the proffered evidence was admissible,<sup>1</sup> we find that any error in excluding it was harmless, MCR 2.613, because the evidence was cumulative. See MRE 403 (relevant evidence may be excluded if it amounts to a needless presentation of cumulative evidence). Consequently, defendant suffered no prejudice.

At trial, plaintiff and defendant stipulated that Avion Mosley shot defendant in 1994. More importantly, defendant's sister, who had also been shot by Avion Mosley during the same 1994 incident, testified exhaustively about the details of the 1994 shooting, emphasizing her fear, as well as defendant's fear, of the Mosley family. She gave specific examples of threatening behavior by the Mosley family, including threatening telephone calls, offers of money not to testify, and physical confrontations. Additionally, defendant's friend, Derik Hamlin, similarly described encounters where decedent had harassed defendant continually. Hamlin detailed the events of the 1994 shooting and the Mosley family's repeated intimidation of defendant. Hamlin was also a witness to the shooting of decedent and was able to detail decedent's threatening behavior the night defendant shot decedent, which was even more critical. Given the testimony of defendant's sister and Hamlin, we find that any testimony by the police officer concerning defendant's fear of the Mosley family would have been cumulative. Because any error in failing to admit the police officer's testimony was harmless, reversal is unnecessary.

Next, defendant argues that he was deprived of a fair trial where the prosecutor's remarks during closing argument amounted to prosecutorial misconduct. Specifically, defendant contends that the prosecutor engaged in misconduct where he argued that the judge shared his belief that defendant's sister had tried to mislead the jury into believing that decedent was present at the 1994 shooting. We find no basis for reversal.

In general, prosecutors are accorded great latitude with regard to their arguments and conduct. *People v Bahoda*, 448 Mich 261, 282; 531 NW2d 659 (1995). When reviewing claims of prosecutorial misconduct, this Court examines the pertinent portion of the record and evaluates the prosecutor's remarks in context. *People v Noble*, 238 Mich App 647, 660; 608 NW2d 123 (1999). "The test is whether defendant was denied a fair trial." *Id.*

The record shows that the trial court asked defendant's sister questions about the men, both named Dajuan, to clarify that the Dajuan present at the 1994 shooting and the victim (decedent) in the present case were different people. Based on these questions, the prosecutor, in rebuttal, stated:

I'm not the only person that asked her [defendant's sister] about that specific thing [which Dajuan was present in the 1994 incident and which was present at the instant incident]. Another party in this courtroom asked her to make sure that that was clear to you and it wasn't one of the attorneys. It was the Judge. Remember the only witness that the Judge asked questions of was her.

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<sup>1</sup> From our examination of the record, it is a close question whether the evidence was inadmissible hearsay and/or irrelevant as the trial court concluded, but it need not be addressed where any such error was harmless under the circumstances of this case.

Because defendant failed to object to these comments on the basis that he asserts on appeal, *Harvey v Security Services, Inc*, 148 Mich App 260, 265; 384 NW2d 414 (1986) (“Objections based on one ground are insufficient to preserve an appellate attack based on different grounds.”), or to request a curative instruction, appellate review is foreclosed “unless the misconduct was so egregious that no curative instruction could have removed the prejudice to the defendant or if manifest injustice would result from our failure to review the alleged misconduct.” *People v Paquette*, 214 Mich App 336, 341-342; 543 NW2d 342 (1995).

Here, viewing the prosecutor’s comments in context, we conclude that no misconduct occurred. It is clear from the record that the prosecutor’s reference to the judge’s questioning of defendant’s sister was to indicate that clarification of the witness’ testimony was needed. The prosecutor’s remarks cannot be read to say that the judge shared the prosecutor’s belief that defendant’s sister had tried to mislead the jury.

Even assuming that the prosecutor’s comments constituted misconduct, defendant is not entitled to reversal of his convictions. Before any testimony was taken, the trial court informed the jury that the court is entitled to ask questions in order to inquire about things that may not have been fully explored by counsel, but that any questions are not meant to reflect the court’s opinion about the evidence. In addition, the court instructed the jury at the end of the case that its questions are not evidence and that it is not trying to influence the jury or express a personal opinion about the case. Moreover, the court instructed the jury to disregard any opinion it may believe that the court has about how the case should be decided. On the basis of these instructions and because juries are presumed to have followed the instructions, *People v Graves*, 458 Mich 476, 486; 581 NW2d 229 (1998), defendant cannot establish that he was prejudiced.

Affirmed.

/s/ Henry William Saad

/s/ Helene N. White

/s/ Joel P. Hoekstra