

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CURTIS MARCO WILLIAMS,

Defendant-Appellant.

UNPUBLISHED

March 19, 2002

No. 227640

Ingham Circuit Court

LC No. 99-075157-FC

Before: Sawyer, P.J., and Murphy and Hoekstra, JJ.

PER CURIAM.

Defendant was convicted by a jury of three counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b, and one count of first-degree home invasion, MCL 750.110a(2). Defendant was sentenced to three concurrent terms of 420 to 650 months' imprisonment for the CSC I convictions and a consecutive sentence of 180 to 480 months' imprisonment for the home invasion conviction. We affirm.

Defendant first argues that the trial court erred by refusing to allow him to cross-examine the prosecution's DNA expert regarding the possibility of an error in the DNA analysis. The decision whether to admit evidence is within the trial court's discretion and will not be disturbed on appeal absent an abuse of discretion. *People v Starr*, 457 Mich 490, 494; 577 NW2d 673 (1998). Likewise, the scope of cross-examination falls directly within the trial judge's discretion. *People v Flenon*, 42 Mich App 457, 467; 202 NW2d 471 (1972). "An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say there was no justification or excuse for the ruling made." *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000).

On cross-examination of the prosecution's expert witness, defense counsel attempted to extract testimony regarding the reliability of the DNA testing and attempted to pose the following hypothetical question:

If you had personal knowledge that Mr. Williams, the Defendant, did not have any contact with [the victim], that he was never in contact with her physically at all and that there was no way for his DNA to be there, wouldn't you conclude that there was an error in the DNA report that you generated?

The prosecution objected to the use of this hypothetical, stating that it was an “impossible situation,” and the lower court sustained the objection, stating that “a hypothetical has to have some basis in reality.”

“In general, hypothetical questions should be based on facts in the record.” *People v Holleman*, 138 Mich App 108, 116; 358 NW2d 897 (1984). The proposition permitting hypothetical questions only when supported by facts in evidence was established in the context of challenges to this type of question when it involved opinions on the ultimate issue in the case. *Flenon, supra* at 465-466. At the time of defense counsel’s proposed hypothetical question, there was no testimony on record to support the notion that defendant never had any contact with the victim. To the contrary, the victim had identified defendant as the perpetrator and his partial fingerprint was found at her house. The question, thus, required the expert witness to make a conclusion based wholly on facts not on the record. Defense counsel had ample opportunity to question the reliability of the expert’s testing without the aid of the hypothetical. We find no abuse of discretion.

Defendant’s next argument is two-fold: first, that he was denied a fair trial because of the prosecution’s questioning of defense witnesses about defendant’s sexual profligacy; and second, that the trial court abused its discretion in admitting the testimony. While the decision whether to admit evidence is within the trial court’s discretion, *Starr, supra*, a claim of prosecutorial misconduct is reviewed de novo, but the trial court’s factual findings are reviewed for clear error. *People v Pfaffle*, 246 Mich App 282, 288; 632 NW2d 162 (2001). The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial. *People v Watson*, 245 Mich App 572, 586; 629 NW2d 411 (2001).

In his allegation of prosecutorial misconduct, defendant challenges the prosecution’s impeachment of two of defendant’s alibi witnesses, including his fiancée. After reviewing the record, we are unable to conclude that the particular lines of questioning were improper or prejudicial. The prosecution conducted this line of questioning in a good-faith effort to establish bias and incredibility. See *People v Layher*, 464 Mich 756, 764; 631 NW2d 281 (2001); *People v Noble*, 238 Mich App 647, 660-661; 608 NW2d 123 (1999). Further, defendant has not met his burden of demonstrating that this particular alleged error requires reversal. See *People v Brownridge (On Remand)*, 237 Mich App 210, 216; 602 NW2d 584 (1999). Finally, with regard to defendant’s claim that the trial court abused its discretion in allowing the cross-examination questioning of defendant’s fiancée regarding defendant’s sexual relationships, we find no abuse of discretion. The questioning was clearly relevant to the extent of the witness’ bias toward defendant.

Affirmed.

/s/ David H. Sawyer
/s/ William B. Murphy
/s/ Joel P. Hoekstra