

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CLYDE EDMONDS,

Defendant-Appellant.

UNPUBLISHED

July 19, 1996

No. 168666

LC No. 91-7123

Before: O'Connell, P.J., and Gribbs and T.P. Pickard,* JJ.

PER CURIAM.

Defendant was convicted of first-degree felony murder, MCL 750.316; MSA 28.548, and sentenced to life imprisonment. We reverse and remand for a new trial.

Defendant first argues that the trial court's treatment of defense counsel deprived defendant of his right to a fair trial. A criminal defendant has the right to be represented by an attorney who receives the respect which an officer of the court is due. *People v Ross*, 181 Mich App 89, 91; 449 NW2d 107 (1989). We find that the examples defendant cites may indicate impatience or hostility, but do not show that the trial court so berated or denigrated defendant's counsel as to deny him a fair trial. *Ross*, *supra*.

Defendant next argues that the trial court improperly interfered with his counsel's cross-examination of prosecution witnesses. A defendant has the right to a reasonable opportunity to test a witness' truth, but the right of cross-examination is not unlimited. *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). On one occasion, the trial court denied defendant recross-examination following the prosecution's redirect examination. The trial court also interrupted defendant's counsel's cross-examination of another witness, and interrupted defendant's counsel's questioning to ask another witness whether the witness had used drugs at the crime scene. The trial court also asked questions which were more than merely clarifying questions, and instructed defendant's

* Circuit judge, sitting on the Court of Appeals by assignment.

counsel regarding the witnesses he could and could not call. Taken together, these incidents were an abuse of the trial court's discretion which resulted in the denial of a fair trial to defendant.

Defendant also argues that the prosecution was required to prove the corpus delicti of attempted armed robbery, the underlying felony, before being permitted to introduce defendant's statement. Because this issue may arise upon retrial, we will address it. In prosecutions for first-degree felony murder, the prosecution is not required to prove that the underlying felony occurred before introducing a defendant's statement. *People v Emerson (After Remand)*, 203 Mich App 345, 347-348; 512 NW2d 3 (1994), *People v Hughey*, 186 Mich App 585, 589; 464 NW2d 914 (1990). Since defendant was charged with felony murder, the prosecution was permitted to introduce defendant's statement regarding the underlying felony without first establishing that the felony occurred.

Defendant also argues that his statement should have been suppressed because he presented evidence that he did not knowingly, voluntarily waive his *Miranda* rights. The prosecution must prove, by a preponderance of the evidence, that a confession was voluntary, and that the defendant knowingly and voluntarily waived his right to avoid self-incrimination. *People v DeLisle*, 183 Mich App 713, 719; 455 NW2d 401 (1990), *People v Garwood*, 205 Mich App 553, 555; 517 NW2d 843 (1994). The prosecution introduced evidence, from a police witness, that defendant did not appear to be under the effects of any narcotics when he gave his statement, and that defendant stated that he understood each of his constitutional rights and that he was waiving them. The trial court did not abuse its discretion in finding this witness credible.

Because we conclude that the trial court's conduct deprived defendant of a fair trial, we need not consider whether defendant received the effective assistance of counsel. Because codefendant was acquitted, we need not consider the issue defendant raises regarding his dual-jury trial.

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Peter D. O'Connell
/s/ Roman S. Gibbs
/s/ Timothy P. Pickard