

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAYMOND LEON CARR,

Defendant-Appellant.

UNPUBLISHED

May 8, 1998

No. 196704

Recorder's Court

LC No. 95-004028

Before: Hoekstra, P.J., and Jansen and Gage, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of accessory after the fact, MCL 750.505; MSA 28.773, and possession of a firearm during the commission of a felony (second offense), MCL 750.227b; MSA 28.424(2). Defendant was sentenced to three years and four months to five years of imprisonment for the accessory after the fact conviction, to be served consecutively to a five-year term for the felony-firearm conviction. Defendant appeals as of right and we affirm.

The incident in question occurred on September 27, 1992, during the early morning hours at a bar in the City of Detroit. Thomas Bush was shot and killed; he suffered a gunshot wound to the head and to the back. Jessie Ritchie was also involved in the shooting with defendant. It was disputed who the actual shooter was. However, the nine-millimeter gun used to kill Bush was recovered by police in the house of defendant's uncle. Although defendant had been charged with first-degree murder, he was convicted as an accessory after the fact.

I

Defendant first argues that the trial court erred by denying his motion to suppress evidence taken from his room without a warrant. The trial court ruled that the search was valid because the police reasonably believed that the owner of the premises searched, defendant's uncle, had the authority to consent to the search, which included defendant's bedroom. A trial court's factual determinations regarding the validity of a consent to search are reviewed for clear error, while its decision whether the evidence should be suppressed is subject to de novo review. *People v Goforth*, 222 Mich App 306,

310; 564 NW2d 526 (1997). A search may be valid if a third party, without actual authority, consents to a search and the police officer's belief in the authority to consent was reasonable. *Id.*, p 311.

Considering the totality of the circumstances, including defendant's uncle's ownership of the flat, the uncle's consent to police searching the flat and signing a consent to search form, the uncle's assertion that defendant no longer lived there, the unlocked bedroom door, and the multiple addresses police were given to check for defendant, the trial court properly found that the police reasonably believed that the uncle had common authority over the bedroom and could validly consent to the search. Because the gun was properly seized pursuant to the consent exception to the warrant requirement, the trial court properly denied defendant's motion to suppress. See *People v Davis*, 442 Mich 1, 10; 497 NW2d 910 (1993).

II

Defendant next argues that the trial court abused its discretion in allowing the prosecution to introduce into evidence a nontestifying codefendant's inculpatory statement against defendant. The statement in question was made by Ritchie to William Phillips, a friend of both Ritchie and defendant. The statement was overheard by Phillips' girlfriend, Michelle Foster. Both she and Phillips testified about Ritchie's inculpatory statement concerning defendant.

The decision whether to admit evidence is reviewed for an abuse of discretion. *People v Lugo*, 214 Mich App 699, 709; 542 NW2d 921 (1995). Where the declarant's inculcation of an accomplice is "made in the context of a narrative of events, at the declarant's initiative without any prompting or inquiry, that as a whole is clearly against the declarant's penal interest and as such is reliable, the whole statement -- including portions that inculcate another -- is admissible as substantive evidence at trial pursuant to MRE 804(b)(3)." *People v Poole*, 444 Mich 151, 161; 506 NW2d 505 (1993). Thus, the statement was admissible under this test.

Also, the admission of statements as substantive evidence against a codefendant does not violate the Confrontation Clause if the prosecutor can establish that the witness is unavailable, and that the statement bears adequate indicia of reliability. *Id.*, p 163. Here, Ritchie was being prosecuted for the same offenses as defendant, and the statement at issue related to those charges. Therefore, Ritchie was unavailable because the prosecutor was unable to call him as a witness in this case.

Further, "the indicia of reliability necessary to establish that a hearsay statement has particularized guarantees of trustworthiness sufficient to satisfy Confrontation Clause concerns must exist by virtue of the inherent trustworthiness of the statement and may not be established by extrinsic, corroborative evidence." *Id.*, p 164. Here, the statement was voluntarily given within twenty-four hours after the shooting. It was made to friends and uttered without prompting or inquiry. Therefore, there are adequate indicia of reliability to justify admitting it.

Accordingly, the trial court did not abuse its discretion in permitting the prosecutor to introduce Ritchie's statement. The statement was admissible under an exception to the hearsay rule, MRE 804(b)(3), and it did not violate the Confrontation Clause.

III

Defendant's third issue is that the trial court erred by not allowing defendant to represent himself. A defendant's request to represent himself must be unequivocal. *People v Seaton*, 106 Mich App 234, 236; 307 NW2d 454 (1981). A request is not "unequivocal" where defendant is attempting to precede pro se with standby counsel. *People v Dennany*, 445 Mich 412, 446; 519 NW2d 128 (1994).

When defendant's trial counsel did not ask the questions defendant had prepared for a witness, defendant asked the trial court if he could personally complete the cross examination. Defendant did not request that counsel be dismissed or that he be allowed to proceed without counsel. There was no constitutional violation because defendant was not making an unequivocal request to represent himself; he merely wanted to supplement the testimony elicited with questions of his own.

IV

Defendant next argues that the trial court erred by not reinstructing the jury on all of the charges, as requested by defendant, in response to the jury's request for a rereading of specific instructions. The extent to which a trial court responds to a request from a jury during deliberations is reviewed by this Court for an abuse of discretion. *People v Perry*, 114 Mich App 462, 467; 319 NW2d 559 (1982).

In this case, the jury requested reinstruction regarding the definitions of first-degree murder, second-degree murder, and aiding and abetting. The trial court reinstructed the jury exactly as it requested. The trial court was under no obligation to go beyond the jury's request and reread the additional instructions requested by defendant. See MCR 6.414(F) ("After jury deliberations begin, the court may give additional instructions that are appropriate."). Therefore, the trial court did not abuse its discretion in responding to the jury's specific request. *People v Paquette*, 214 Mich App 336, 339-340; 543 NW2d 342 (1995); *People v McWhorter*, 150 Mich App 826, 833; 389 NW2d 499 (1986); *Perry*, *supra*, p 468

V

Defendant's final issue is that the trial court erred in proceeding without defendant's trial counsel when the jury requested reinstruction and that certain testimony be reread during its deliberation.

During jury deliberations, defense counsel's wife went into labor and delivered their child. The trial court excused counsel from the trial. Before doing so, the parties agreed to a rereading of the instructions in counsel's absence. See *People v White*, 144 Mich App 698, 705; 376 NW2d 184 (1985). Further, the trial court had substitute counsel stand in for defendant's original trial counsel with regard to other matters. The trial court also consulted with trial counsel by telephone regarding issues that arose after he was excused.

There is no error on the record before us. The trial court ensured that defendant had substitute counsel when defendant's original trial counsel was unavailable. Moreover, the trial court consulted

with defendant's original trial counsel by telephone when necessary. At no point can it be contended that defendant was not represented by counsel during the trial. The trial court ensured that defendant was properly represented and maintained contact with defendant's original trial counsel since he was familiar with the case. Defendant was not denied his right to counsel.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Kathleen Jansen

/s/ Hilda R. Gage