

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN P. ROSE,

Defendant-Appellant.

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UNPUBLISHED

October 2, 2003

No. 240837

Wayne Circuit Court

LC No. 01-001979

Before: Smolenski, P.J., and Markey and Wilder, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of three counts of first-degree criminal sexual conduct, MCL 750.520b(1)(b)(i) (sexual penetration of another at least thirteen but less than sixteen years of age who is a member of the same household). Defendant was sentenced to 6 to 20 years' imprisonment on each count, to be served concurrently. Defendant appeals as of right. This appeal is being decided without oral argument pursuant to MCR 7.214(E). We affirm.

Defendant argues that the trial court abused its discretion in excluding as irrelevant two witnesses' entire testimony and limiting cross-examination of other witnesses. Defendant asserts that the trial court's rulings effectively denied defendant of his ability to present his defense and violated his right to confrontation. We disagree.

The decision whether to admit evidence is within the discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v Katt*, 468 Mich 272, 278; 662 NW2d 12 (2003). Likewise, a trial court's limitation of cross-examination is reviewed for an abuse of discretion. *People v Sexton*, 250 Mich App 211, 221; 646 NW2d 875 (2002). An abuse of discretion is found only if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made, *People v Snider*, 239 Mich App 393, 419; 608 NW2d 502 (2000), or the result is so palpably and grossly violative of fact and logic that it evidences a perversity of will, a defiance of judgment, or the exercise of passion or bias, *People v Hine*, 467 Mich 242, 250; 650 NW2d 659 (2002).

Defendant contends that the excluded testimony was relevant because it would have given a contextual basis to the victim's motive to lie about defendant's molestation. Specifically, defendant was prohibited from questioning defendant's wife about the deterioration in her relationship with the victim and the victim's mother, as well as her knowledge regarding the

relationship the victim had with her mother's fiancé. Also, the entire testimony of two defense witnesses were excluded. Their testimony was focused on their observations of the relationship between the victim and defendant, the victim's mother and defendant, and the victim's mother and defendant's wife.

The court also excluded as irrelevant testimony questions posed to the victim's mother regarding whether (1) she had ever told defendant's wife that the victim faked being sick to get more attention; (2) she told the victim that all men were dogs and were only good for one thing; (3) the victim was covered under defendant's health insurance policy and whether she received a doctor's bill for \$8,700 shortly before the complaint was made in this case; and (4) she had ever told defendant's wife that she thought her fiancé was molesting the victim. The prosecution's objection was also sustained when defendant asked the fiancé whether the victim's mother had accused him of molesting the victim.

A defendant has a constitutional right to confront the witnesses against him, but the right is limited. *People v Ho*, 231 Mich App 178, 189; 585 NW2d 357 (1998). The constitution guarantees an opportunity for the defendant to cross-examine, but not to the extent or in whatever way the defendant wishes. *Id.* "Rather, the Confrontation Clause protects the defendant's right for a *reasonable* opportunity to test the truthfulness of a witness' testimony." *Id.* at 190, emphasis in original.

Limitations on cross-examination may infringe on a defendant's right to confrontation where the defendant is prevented from placing before the jury "facts from which bias, prejudice or lack of credibility of a prosecution witness might be inferred." *People v Kelly*, 231 Mich App 627, 644; 588 NW2d 480 (1998). However, cross-examination may be denied on collateral matters bearing only on general credibility and on irrelevant issues. *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992). "Relevant evidence" is evidence having any tendency to make the existence of any fact which is of consequence to the determination of the action more probable or less probable than it would be without the evidence. MRE 401. The parties may draw into dispute the credibility of the witnesses and, within limits, produce evidence assailing and supporting credibility. *People v Mills*, 450 Mich 61, 72; 537 NW2d 909, modified on other grounds 450 Mich 1212 (1995). The test is whether the evidence will aid the factfinder in determining the probative value of other evidence offered to affect the probability of the existence of a consequential fact. *Id.*

In this case, defendant's sole theory of the case was that the victim had lied. However, her motive for lying was elusive and defendant at no point presented a coherent defense theory. In his opening statement, defendant asserted that the victim's mother had accused her past three boyfriends of molesting the victim and that the victim was mimicking her mother by accusing defendant of sexually abusing her. Yet, defendant could not articulate a reason for such behavior and did not even attempt to present expert testimony as to why a person would act in such a manner.

On appeal, defendant appears to hypothesize that the victim lied because she desired a stable home life, purportedly comprised of only her, her mother, and her mother's fiancé, and, therefore, defendant contends that the excluded testimony was aimed at testing the victim's credibility "through a contextual examination of the relationships of the parties and witnesses." If this truly had been defendant's theory of the case at trial, then he could have questioned the

victim more thoroughly about her feeling towards the people around her or attacked her character for truthfulness. Instead, defendant chose a tack in which he wanted to present a general picture of the interrelationships between the parties involved and have the jury infer a motive to lie. However, tension between members of a family, especially a split family with a teenager, is a common occurrence and questions posed directly to the victim did not reveal any prior animosity towards defendant. The victim admitted that she had trouble getting along with defendant's wife and defendant's youngest son, yet stated she was telling the truth and always had been. Therefore, most of the excluded testimony was marginally relevant at best, bearing only on general witness credibility, and cross-examination on these matters could properly be limited. *Canter, supra* at 564.

Moreover, given defendant's inability to articulate to the court a coherent defense theory, there was a high likelihood that the introduction of the excluded testimony at trial would have served only to confuse the issues and mislead the jury.<sup>1</sup> While we find that some of the excluded testimony was arguably relevant, a trial court's decision on a close evidentiary question such as this one ordinarily cannot be an abuse of discretion. *People v Sabin (After Remand)*, 463 Mich 43, 67; 614 NW2d 888 (2000). Accordingly, we conclude that the trial court did not abuse its discretion in excluding the above-mentioned testimony.

Defendant also argues that a remark made by the prosecutor in his closing argument constituted prosecutorial misconduct and denied defendant of a fair trial. Again we disagree.

Defendant asserts that the prosecution improperly commented on defendant's lack of emotional response when told by police of the victim's accusations just before they executed a search warrant for his home. When reviewing alleged instances of prosecutorial misconduct, a court must examine the pertinent portion of the record and evaluate the prosecutor's remarks in context. *People v Green*, 228 Mich App 684, 692-693; 580 NW2d 444 (1998). The test is whether the defendant was denied a fair and impartial trial. *Id.* at 693.

The prosecutor stated in his closing argument:

[The police] hit the door cold. No one knows they're coming.

They walk into this house, go up to Mr. Rose, say, "Hey, your 15-year-old daughter has accused you of having sex with her. Here's all the facts."

And what does he do? Does he start screaming out that it's not true; does he get emotional; does he do anything like that? No. What he does is he takes that, per Sgt. Terry's testimony, he takes that search warrant and calmly passes it over to his wife.

What the prosecutor was highlighting was defendant's lack of emotion on hearing the accusations; the fact that defendant calmly stated his denial, rather than "*screaming out* that it's

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<sup>1</sup> It is within the trial court's discretion to exclude evidence, which although relevant, it believes will only confuse the issues or mislead the jury. MRE 403.

not true.” The prosecutor continued and noted that defendant simply passed the search warrant to his wife, “[a]s if he doesn’t need to read it; he already knows all of the facts that are stated in that search warrant.” The prosecutor was not commenting on defendant’s silence, rather he permissibly argued the evidence and its reasonable inferences. *Kelly, supra* at 641.

The evidence showed that defendant did deny the allegations when presented with the search warrant, albeit without emotion. Lest anyone think that the prosecution was insinuating that defendant remained silent in the face of the accusations, the trial court issued a cautionary instruction to the jury, which we find was sufficient to cure any prejudice suffered by defendant as a result of a juror misinterpreting the prosecutor’s remark.<sup>2</sup> *People v Daniel*, 207 Mich App 47, 56; 523 NW2d 830 (1994). Further, the jury was presented with defendant’s wife’s explanation as to why defendant did not read the search warrant. Accordingly, defendant was not denied a fair trial as a result of the prosecutor’s comment.

Affirmed.

/s/ Michael R. Smolenski

/s/ Jane E. Markey

/s/ Kurtis T. Wilder

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<sup>2</sup> We are compelled to note that defendant’s reference in his appellate brief to the trial court’s comment, “You know that’s inadmissible…” was clearly taken out of context, as defendant used the phrase to imply that it was directed at the prosecutor because the court agreed with defendant’s objection. However, the comment was directed at defendant and the court actually stated that it had ruled the officer in charge’s testimony, that defendant denied the allegations, was inadmissible. Moreover, the court’s remark itself was incorrect, as there was no objection to the officer’s testimony and no ruling to exclude it.