

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
June 14, 2012

v

RICKY MOORE,

No. 299287
Wayne Circuit Court
LC No. 09-020798-FC

Defendant-Appellant.

Before: JANSEN, P.J., and CAVANAGH and HOEKSTRA, JJ.

PER CURIAM.

Defendant appeals as of right jury convictions on two counts of conspiracy to commit armed robbery, MCL 750.529, assault with intent to rob while armed, MCL 750.89, and two counts of possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. We affirm.

On January 26, 2009, defendant, Robert Bates, and Jonathan Walker were involved in the attempted, but unsuccessful, robbery of Misbah Hans, an apartment building owner. The next day, defendant and Danny Gaskins returned to the apartment building. Gaskins went inside claiming to be interested in renting an apartment. While Hans was showing Gaskins an apartment, Gaskins pulled a gun, shot Hans multiple times, and then ran. Hans died. Criminal charges against Bates, Walker, Gaskins and defendant were filed. This appeal follows defendant's convictions.

Defendant argues he is entitled to a new trial because the trial court abused its discretion in limiting the cross-examination of Bates, Walker, Gaskins, and the forensic pathologist. We disagree. A trial court's evidentiary decisions are reviewed for an abuse of discretion. See *People v Orr*, 275 Mich App 587, 588; 739 NW2d 385 (2007). Preserved constitutional issues are reviewed de novo, while unpreserved constitutional issues are reviewed for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *People v Beasley*, 239 Mich App 548, 557; 609 NW2d 581 (2000).

It appears that defendant is arguing the trial court so limited his counsel's cross-examination of Walker, Bates, Gaskins, and the forensic pathologist that he was denied his rights to present a defense and to confront the witnesses against him. A defendant has constitutional rights to present a defense and to confront the witnesses against him, but those rights are not without limitations. *People v Anstey*, 476 Mich 436, 460; 719 NW2d 579 (2006); *People v*

Adamski, 198 Mich App 133, 138; 497 NW2d 546 (1993). A defendant must still comply with procedural and evidentiary rules established to assure fairness and reliability in the verdict and other legitimate interests of the criminal trial process must be promoted. *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984); *People v Unger*, 278 Mich App 210, 250; 749 NW2d 272 (2008). The Confrontation Clause protects the defendant's right for a reasonable opportunity to test the truthfulness of a witness' testimony, *Adamski*, 198 Mich App at 138, but the trial court can impose limits on cross-examination to address concerns of harassment, prejudice, confusion of the issue, repetitive or marginally relevant interrogation. See *People v Ho*, 231 Mich App 178, 189-190; 585 NW2d 357 (1998). MRE 611(a), for example, requires a trial court to exercise reasonable control over the mode of witness interrogation and the presentation of evidence to promote the ascertainment of truth, avoid needless use of time, and protect witnesses from harassment.

With regard to Walker's testimony, defendant argues that his counsel was (1) prevented from questioning Walker "as to his knowledge of how he was treated differently by authorities as a juvenile and adult," (2) limited with regard to questioning Walker about his arrest and subsequent plea, and (3) "whether there was a personal protection order against him." However, defendant has failed to explain how it was relevant to this matter whether Walker was treated differently as a juvenile versus as an adult and whether he had a personal protection order against him. And defendant has failed to provide any supporting authority for his claims. Further, review of the record reveals that defense counsel was permitted to question Walker about his arrest and subsequent plea agreement, including that he was allowed to plead guilty to attempted armed robbery which carried a maximum penalty of five years in prison instead of the possible life sentence for convictions on armed robbery or conspiracy to commit armed robbery charges. Thus, defendant's argument is without merit.

With regard to Bates' testimony, defendant argues that his counsel was restricted from questioning Bates (1) as to his "actions while he was in juvenile court," (2) "inquiring as to whether or not he used aliases," (3) his "pattern of involving persons younger than himself in order to shift the blame whenever he got into trouble with authorities, his prior convictions," and (4) his understanding of what he pled to and the consequences of his plea. However, again defendant has failed to explain how Bates' "actions while he was in juvenile court" and his purported "pattern of involving younger persons" were relevant to this matter and has provided no supporting authority for his claims. None of the individuals involved in these criminal occurrences were juveniles; accordingly, as the trial court concluded, the subjects were irrelevant. And defense counsel was permitted to question Bates about current and previous agreements he made with the police and prosecutor as related to his prior crimes, possible penalties, and actual penalties due to agreements. And finally, defense counsel was permitted to extensively cross-examine Bates regarding his use of aliases, including that sometimes he used his middle name or a junior designation. The limitations imposed by the trial court to prevent confusion of the issues, avoid needless use of time, as well as repetitive and marginally relevant interrogation were proper. See MRE 611(a); *Ho*, 231 Mich App at 189-190.

With regard to Gaskins' testimony, defendant argues that (1) "the court directed his questioning with regard to his plea agreement," (2) "asked defense counsel to rephrase questions," and (3) "frequently instructed defense counsel to 'move on.'" However, it is clear from the record that defense counsel was permitted to extensively cross-examine Gaskins about

his plea agreement. The limitations imposed by the trial court were clearly designed to protect from disclosure communications between Gaskins and his attorney that were subject to the attorney-client privilege. Further, defendant cites only to one time when his counsel was asked to rephrase a question and that question was:

Q. So when Ms. Lindsey asked you questions about did you say something, or is that what was said, you said no, sometimes, do you mean to say no because that wasn't everything that was talked about, or do you mean to say no just because one particular question she picked out didn't happen?

As the trial court noted, the question was confusing and "hard to follow;" thus, the request to rephrase was reasonable. And it is clear from the record that both the prosecutor and defense counsel were appropriately instructed to "move on;" thus, contrary to defendant's claim there was no suggestion that defense "counsel was in some fashion delaying the trial."

Defendant also argues that his counsel's cross-examination of the forensic pathologist was unduly limited because he was denied the "opportunity to present evidence that the pathologist report may have been inaccurate." This argument is without merit. The forensic pathologist who performed the autopsy on Hans clearly testified that the cause of death was three gunshot wounds, including one to the chest. Defendant has failed to explain what other evidence existed that could have been presented which would have refuted that testimony or demonstrated that the trial court abused its discretion with regard to the cross-examination of this witness.

In summary, defendant has failed to demonstrate that the trial court abused its discretion with regard to the limitations imposed on his counsel's cross-examination of these witnesses and that he was deprived of the right to present a defense or to confront the witnesses against him.

Next, defendant argues that there was insufficient evidence to support his convictions on the charges of conspiracy and assault with intent to rob while armed arising from the incident of January 27, 2009; thus, his motion for directed verdict should have been granted. We disagree.

In considering a trial court's decision on a motion for directed verdict, we review the record de novo to determine whether the evidence, when viewed in the light most favorable to the prosecution, could persuade a rational trier of fact that the essential elements of the crimes were proven beyond a reasonable doubt. *People v Parker*, 288 Mich App 500, 504; 795 NW2d 596 (2010).

Here, defendant solely argues that the "only person who testified to the existence of the conspiracy" was Gaskins and that, because the "prosecutor failed to present independent evidence of the existence of the conspiracy prior to the introduction of Mr. Gaskins' testimony," there was insufficient evidence to support his convictions. In support of his claim that "there must be independent, under a preponderance of the evidence standard, proof of the conspiracy before a coconspirator's statements are admissible," defendant relies on the case of *People v Vega*, 413 Mich 773, 780; 321 NW2d 675 (1982). However, in that case the issue was whether a third-party could testify regarding out-of-court statements made in furtherance of a conspiracy. *Id.* at 775-776. Thus, the testimony involved hearsay offered by a third-party. *Id.* at 780. Here, Gaskins, the coconspirator on January 27, 2009, testified in court about their conspiracy to

commit the criminal acts; thus, the holding in *Vega* is not applicable and defendant's argument is without merit.

Affirmed.

/s/ Kathleen Jansen
/s/ Mark J. Cavanagh
/s/ Joel P. Hoekstra