

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BENNY GUYE,

Defendant-Appellant.

UNPUBLISHED

June 26, 2001

No. 221865

Wayne Circuit Court

LC No. 98-011753

Before: Sawyer, P.J., and Griffin and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for criminal sexual conduct in the fourth degree, MCL 750.520e(1)(c). Defendant was sentenced to eighteen months’ probation. We affirm.

Defendant first argues that the trial court abused its discretion when it allowed the prosecution to amend its witness list on the opening day of trial. In so doing, defendant argues, the trial court violated defendant’s constitutional right to confront witnesses. We disagree.

A trial court’s decision to permit amendment to the witness list is reversible only for an abuse of discretion. *People v Burwick*, 450 Mich 281, 291; 537 NW2d 813 (1995). An abuse of discretion exists where the court’s decision is so grossly violative of fact and logic as to demonstrate a perversity of will, a defiance of judgment, or the exercise of passion or bias, or when an unprejudiced person, considering the facts upon which the trial court acted, would say that there was no justification or excuse for the ruling. *People v Gadomski*, 232 Mich App 24, 32-33; 592 NW2d 75 (1998).

The Michigan res gestae witness statute requires the prosecuting attorney to attach to the filed information a list of all known witnesses who might be called at trial, as well as all res gestae witnesses known to the prosecuting attorney or investigating law enforcement officers.¹

¹ A res gestae witness is one who witnessed some event occurring in the continuum of a criminal transaction, whose testimony would aid in developing the full disclosure of the facts. *People v*

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MCL 767.40(a). The prosecutor's duty under the statute is to provide advance notice of known witnesses, and reasonable assistance to locate witnesses where a defendant so requests. *Burwick, supra*, 450 Mich 289. However, there is no requirement for the prosecution to exercise due diligence to *discover* the names of witnesses. *Gadomski, supra*, 232 Mich App 36 (emphasis added). As our Supreme Court has noted, "The advance notice required by the statute is advance notice of witnesses *known* to the prosecution." *Burwick, supra*, 450 Mich 291. Furthermore, "(t)he prosecuting attorney may add or delete from the list of witnesses he or she intends to call at trial at any time upon leave of the court and for good cause shown or by stipulation of the parties." MCL 767.40a(4).

This Court has previously found that there is "good cause" for a witness' late addition to a witness list by virtue of the fact of the prosecution's late discovery of a *res gestae* witness. *Gadomski, supra*, 232 Mich App 36. Here, the prosecutor stated at trial that she had "become aware" of a former cellmate (Rios) of complainant; that she had received a faxed statement from Rios the previous afternoon, and that the prosecution had immediately faxed it onward to defense counsel; and that "I did the best I could to let Mr. Shulman know as soon as I knew what Ms. Reos [sic] would testify to." Therefore, in accordance with *Gadomski*, the trial court did not abuse its discretion where it found good cause supporting the prosecution's request to add Rios to the witness list.

Defendant nonetheless argues that the trial court violated the *res gestae* witness statute in two important respects. First, defendant argues that the trial court should have required the prosecution to actively demonstrate that there was good cause for Rios not to have been properly disclosed as a witness in a timely fashion. However, as noted above, this Court has previously determined that good cause for late entry of a witness exists where the witness was previously unknown to the prosecution, as appears to be the instant case. *Gadomski, supra*, 232 Mich App 36. Therefore, the very reason for the prosecution's request itself demonstrated good cause for the trial court to grant its request to amend the witness list. There was no need for the trial court to require a separate, specific demonstration of good cause.

Second, defendant asserts that the prosecution should have discovered Rios earlier, in light of the valuable corroboration her testimony provided for the prosecution's case. However, as noted above, this Court has previously determined that the prosecution is not required to exercise any sort of due diligence to discover the names of witnesses. *Gadomski, supra*, 232 Mich App 36. Rather, "(t)he prosecution's duty under the statute is to provide notice of known witnesses and reasonable assistance to locate witnesses on a defendant's request." *Id.*

Defendant additionally argues that the trial court abused its discretion where it failed to create a remedy minimizing the prejudice resulting to defendant from the late addition of Rios to the witness list. However, the court explicitly granted defendant additional time to interview Rios. Defendant nevertheless failed to ask for a continuance at any time. As this Court has

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Calhoun, 178 Mich App 517, 521; 444 NW2d 232 (1989).

previously noted, failure to ask for a continuance, although not a strict requirement, tends to negate a defendant's argument that a late endorsement was prejudicial to defendant's case. *People v Hodges*, 34 Mich App 90, 91; 190 NW2d 703 (1971).

Finally, defendant argues that, by granting the prosecution's request to add Rios to the witness list, the trial court directly violated defendant's constitutional right to effectively confront adverse witnesses. However, the trial record indicates that defense counsel indeed cross-examined Rios. Furthermore, the trial court offered defense counsel the opportunity to interview Rios prior to her testimony. Overall, defendant was afforded the opportunity to confront Rios, and defendant took full advantage of that opportunity. Therefore, defendant was not denied his opportunity to confront an adverse witness, in violation of the US Const, Ams VI and XIV.

Defendant next argues that the trial court violated his constitutional right to confrontation of witnesses by limiting defendant's cross-examination of Scott Correctional Facility Warden Joan Yukins regarding the bias of complainant as to defendant. We disagree.

A trial court's limitation on cross-examination by a defendant is reviewed for an abuse of discretion. *People v Minor*, 213 Mich App 682, 684; 541 NW2d 576 (1995). As noted above, an abuse of discretion exists where the court's decision is so grossly violative of fact and logic as to demonstrate a perversity of will, a defiance of judgment, or the exercise of passion or bias, or when an unprejudiced person, considering the facts upon which the trial court acted, would say that there was no justification or excuse for the ruling. *Gadomski, supra*, 232 Mich App 32.

The scope of cross-examination is within the discretion of the trial court. *People v Canter*, 197 Mich App 550, 564; 496 NW2d 336 (1992). As this Court has previously noted, "(n)either the Sixth Amendment's Confrontation Clause nor due process confers on a defendant an unlimited right to cross-examine on any subject." *Id.* Rather, cross-examination may be denied with respect to irrelevant issues, as well as collateral matters that bear only on general credibility. *Id.*

At trial, defendant attempted to cross-examine Warden Yukins regarding a prisoner work program assignment evaluation dated April 20, 1999, that was located in complainant's prison record. The prosecution immediately objected on the ground that the incident recorded took place approximately sixteen months *after* defendant left his job at the Scott Correctional Facility. The trial court then invited the prosecution and defense counsel to approach the bench for a brief discussion, at which time the trial court apparently reviewed the document. Immediately thereafter, the trial court declared that "[t]hat has nothing at all to do with this case. Please proceed."

Defendant argues that since there were no corroborating witnesses to sexual contact between complainant and defendant, the issues of complainant's credibility and bias were central to the jury's determination of guilt. However, defendant provides no argument specifying how the document at issue would serve to establish complainant's bias or attack her credibility. The work program evaluation was completed on April 20, 1999, while defendant moved to a new position at the Mound Correctional Facility in early 1998. There is no indication that defendant

held *any* connection to complainant's work program evaluation serving to establish complainant's bias against defendant. Therefore, the trial court's determination that the form was not relevant to an issue at hand, and subsequent limitation on defendant's cross-examination on the subject, did not represent an abuse of discretion.

Affirmed.

/s/ David H. Sawyer
/s/ Richard Allen Griffin
/s/ Peter D. O'Connell