

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

v

CORTEZ R. DAVIS,

Defendant-Appellee.

UNPUBLISHED

August 31, 2004

No. 246847

Wayne Circuit Court

LC No. 94-002089

Before: Hoekstra, P.J., and Cooper and Kelly, JJ.

COOPER, J. (*dissenting*).

I must respectfully dissent from the majority opinion. The trial court granted defendant's motion for relief from judgment and new trial on three separate occasions. I would defer to the trial court's discretion and affirm.

First, I would not find that defendant waived his right to appellate review of this issue. The trial court conceded its own error in instructing the jury. It is unduly punitive to defendant to reverse the trial court's order under these circumstances. The trial court was in the best position to discover its own error and grant the motion regardless of defense counsel's initial approval of the instructions.

I would also defer to the trial court's determination that defendant was entitled to relief. We review a trial court's decision regarding a motion for relief from judgment for an abuse of discretion.¹ A trial court abuses its discretion in granting a motion for relief from judgment "where 'an unprejudiced person, considering the facts on which the trial court [relied], would find no justification or excuse for the ruling made.'"²

The trial court granted defendant relief from judgment and a new trial on three separate occasions. The trial court continued to find defendant entitled to relief after this Court reversed

¹ *People v Ulman*, 244 Mich App 500, 508; 625 NW2d 429 (2001).

² *People v McSwain*, 259 Mich App 654, 685; 676 NW2d 236 (2003) (alterations in original), quoting *People v Williams*, 240 Mich App 316, 320; 614 NW2d 647 (2000).

the trial court's order on other grounds³ and, following reconsideration, after this Court vacated the court's order on a second occasion.⁴ As previously noted, the trial court conceded its own error in instructing the jury and granted defendant relief from judgment. The trial court is in the best position to judge its own errors. It would be unfair to defendant to, once again, fail to defer to the trial court's judgment on this issue.

/s/ Jessica R. Cooper

³ *People v Davis*, unpublished opinion per curiam of the Court of Appeals, issued June 24, 1997 (Docket No. 183428).

⁴ *People v Davis*, unpublished order of the Court of Appeals, entered September 18, 2002 (Docket No. 242997).