

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
December 13, 2011

V

DEVAUGHN DANIEL MASON,
Defendant-Appellant.

No. 300008
Wayne Circuit Court
LC No. 10-003885-FC

Before: O'CONNELL, P.J., and MURRAY and DONOFRIO, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of assault with intent to commit murder, MCL 750.83, possession of a firearm during the commission of a felony, MCL 750.227b, and felon in possession of a firearm, MCL 750.224f. Because the trial court did not deny defendant his due process right to present a defense, we affirm.

Defendant's convictions arise from a shooting that occurred outside a nightclub in Detroit. Several witnesses testified that defendant, who was working as a bouncer at the nightclub, shot Albert Sadler in the arm following a dispute involving defendant's refusal to admit Sadler's companions into the nightclub without proper identification. Defendant's theory of defense at trial was that he was inside the nightclub at the time of the shooting and was misidentified as the shooter.

Defendant's sole argument on appeal is that the trial court so limited defense counsel's cross-examination of witnesses that defendant was denied his due process right to present a defense. In particular, defendant contends that the trial court unduly restricted cross-examination regarding the police's failure to conduct a gunshot residue test, DNA testing of a blood sample, and fingerprint analysis of a shell casing. "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), quoting *People v Crawford*, 232 Mich App 608, 620; 591 NW2d 669 (1998). We also review for an abuse of discretion a trial court's determination regarding the admissibility of evidence. *People v Mardlin*, 487 Mich 609, 614; 790 NW2d 607 (2010). "An abuse of discretion occurs when the court chooses an outcome that falls outside the range of reasonable and principled outcomes." *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008).

Although a defendant has a constitutional right to present a defense, the right is not absolute, and may be limited by "established rules of procedure and evidence designed to assure

both fairness and reliability in the ascertainment of guilt and innocence.” *People v Toma*, 462 Mich 281, 294; 613 NW2d 694 (2000), quoting *Chambers v Mississippi*, 410 US 284, 302; 93 S Ct 1038; 35 L Ed 2d 297 (1973); *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008). MRE 402 provides that all relevant evidence is generally admissible while irrelevant evidence is not. MRE 403 allows a trial court to exclude evidence, even if relevant, “if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Further, MRE 611(a) requires a trial court to exercise control over the mode of witness interrogation and presentation of evidence in order to promote the ascertainment of truth, avoid needless consumption of time, and protect witnesses from harassment or embarrassment.

The trial court did not abuse its discretion by restricting cross-examination regarding the police’s failure to conduct a gunshot residue test. Sergeant Michael Jackson testified that he interviewed defendant approximately 23 hours after the shooting, and defendant did not request a gunshot residue test. Investigator James Blanks testified that a gunshot residue test was not necessary because at least eight witnesses identified defendant as the shooter. Blanks also testified that such tests are generally not conducted because of the closure of the Detroit crime lab. After further questioning, the trial court asked the prosecution to stipulate that a gunshot residue test may be conducted absent the defendant’s request. The prosecution so stipulated. Thereafter, defense counsel sought to question Blanks regarding the police department’s policy with respect to gunshot residue testing. At that point, the trial court cut off further questioning on the matter, stating:

I’m not going to – I’m going to cut this off right here. We have been over this ad infinitum. There was no test done. Whatever the reason might have been, it was not done. There is no sense in spending a great deal of time with explaining the what and why and why it wasn’t done. It wasn’t done. So, that’s the end of that.

The trial court properly exercised its discretion to preclude further inquiry into the police department’s policy and focus the questioning on issues other than gunshot residue testing. The trial court’s ruling was not outside the range of reasonable and principled outcomes.

The trial court also did not abuse its discretion by prohibiting questioning regarding the DNA testing of a blood swab. Blanks testified that a blood swab collected at the scene was submitted for DNA testing, but he had not received the test results. This case presented no issue concerning the victim’s identity, and the trial court allowed defense counsel to inquire regarding the location of the blood in relation to where Sadler was shot. The trial court properly determined that the DNA test results were irrelevant given that the identity of the victim was undisputed. Moreover, the exact location of the blood drops was irrelevant to the ultimate issue of whether defendant committed the shooting. Thus, the trial court properly exercised its discretion and precluded questioning regarding the DNA test results.

Further, the trial court did not abuse its discretion by prohibiting further questioning regarding the fingerprint analysis of a shell casing recovered from the crime scene. Blanks testified that the shell casing was sent to the Michigan State Police crime lab for fingerprint

analysis but that he had not received a report indicating the test results. Defense counsel then questioned Blanks regarding when he sent the casing and whether he made any follow-up inquiry regarding the fingerprint analysis. Counsel asserted that his questions were relevant to whether the police conducted a thorough investigation. The trial court disallowed the questions, stating:

I have ruled that [there is] no more to be said about it. He didn't get the report back. There is nothing in evidence to indicate one way or the other about any kind of fingerprints here so there is no evidence here. The jury doesn't have to be caught up if there are fingerprints or not. It's not an issue. We're not going to get into whether the police dotted all the I's and crossed all the T's unless it touches on something that they didn't do that is important to the case and to the evidence here. Otherwise, let's move on to something more pertinent. That's it. Move on.

Thus, the trial court determined that the jury did not need to concern itself with whether there were fingerprints on the shell casing. The court also determined that whether the police followed up with the crime lab regarding the fingerprint analysis was irrelevant. It was within the trial court's discretion to determine that further inquiry regarding these matters would merely waste time and confuse the jury. The trial court's rulings did not fall outside the range of reasonable and principled outcomes.

Finally, we note that the trial court gave defendant an opportunity to present his defense. The court allowed defense counsel to cross-examine the police officers regarding the failure to conduct a gunshot residue test and the fact that they did not receive the DNA test results or the fingerprint analysis. Counsel was thus permitted to show the jury that the tests were either not conducted or that the results were never received. The trial court also gave defense counsel an opportunity to cross-examine the prosecution's witnesses regarding their vantage points at the time of the shooting, and defendant called five witnesses, including himself, to testify on his behalf. Moreover, defendant admitted two exhibits—pictures depicting the nightclub's foyer and back door—both supporting the defense witnesses' testimony. Accordingly, the trial court gave defendant an opportunity to present his defense, and his due process rights were therefore not violated.

Affirmed.

/s/ Peter D. O'Connell
/s/ Christopher M. Murray
/s/ Pat M. Donofrio