STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

DONALD RAY PORTER,

Defendant-Appellant.

UNPUBLISHED
February 11, 2014

No. 308094
Shiawassee Circuit Court
LC No. 11-001724-FC

Before: BOONSTRA, P.J., and CAVANAGH and FITZGERALD, JJ.

PER CURIAM.

A jury convicted defendant of first-degree premeditated murder, MCL 750.316(1)(a), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced defendant as a habitual offender, third offense, MCL 769.11, to mandatory life imprisonment for the murder conviction, and a consecutive two-year term of imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

I. PERTINENT FACTS AND PROCEDURAL HISTORY

Defendant's convictions arise from the December 15, 2010 shooting death of his live-in girlfriend, Lauri Pilot, in their house in Henderson, Michigan. Evidence indicated that defendant and Pilot had a tumultuous relationship. The prosecution's theory was that, on the night of Pilot's death, defendant and Pilot argued before defendant placed a 20-gauge shotgun directly on Pilot's chest and pulled the trigger. Pilot died instantly. When the police arrived, Pilot was lying on her bed with a shotgun parallel to her body. Defendant initially told the police that Pilot committed suicide, but later stated that the shotgun accidentally discharged during a mutual struggle over the gun. At trial, the prosecution presented evidence through expert witnesses and law enforcement personnel that Pilot's death was a homicide, that she suffered a tight contact wound, that the scene was altered, and that it was unlikely that Pilot died from a self-inflicted wound or an accidental shooting. The defense maintained that defendant did not shoot Pilot, and defendant testified that Pilot committed suicide.

The prosecution presented the testimony of a jailhouse informant, Richard Turner, who testified that defendant made several comments about his case, including that he had been fighting with Pilot over a "legal issue" concerning the title to the house, and that defendant had another girlfriend who came to visit him in jail. Turner was cross-examined regarding his

pending charge of manufacturing more than 200 marijuana plants, and denied being promised anything in return for his testimony.

Prior to trial, the trial court held a *Walker*[1] hearing concerning defendant's motion to suppress statements made to the police, on the grounds that they were made while defendant was in custody and not properly advised of his *Miranda*[2] rights. The trial court heard testimony from police officers who arrived at the scene of Pilot's death. The officers testified that they asked defendant to sit in a running patrol car with the heater on to keep warm. Defendant was not questioned at the time. Defendant agreed to accompany a detective to the sheriff's department to give a statement, and was not arrested, detained, or handcuffed at the scene or during the ride to the station. Defendant was interviewed at the station for approximately two and one-half hours, during which time defendant took numerous breaks for cigarettes and coffee. The officers testified that defendant went outside by himself for cigarette breaks in an unfenced area where he could have walked away. Defendant was advised that he was free to leave at any time. After defendant made inculpatory statements, he was advised of his rights and arrested. Defendant then invoked his right to counsel.

The trial court granted defendant's motion in part and denied it in part. The trial court suppressed statements made after defendant was arrested and invoked his right to counsel. However, the trial court denied defendant's motion with respect to statements made pre-arrest, as it found that under the totality of the circumstances, defendant was not "in custody" when those statements were made. The trial court affirmed its ruling in denying defendant's post-conviction motion for a new trial.

II. SUFFICIENCY OF THE EVIDENCE

Defendant first argues that there was insufficient evidence of premeditation and deliberation to support his first-degree premeditated murder conviction. We disagree.

When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). Circumstantial evidence and reasonable inferences arising from the evidence can constitute satisfactory proof of the elements of the crime. *People v Truong (After Remand)*, 218 Mich App 325, 337; 553 NW2d 692 (1996). "[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). "[M]inimal circumstantial evidence will suffice to establish the defendant's state of mind[.]" *People v Kanaan*, 278 Mich App 594, 622; 751 NW2d 57 (2008).

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[1] *People v Walker (On Rehearing)*, 374 Mich 331; 132 NW2d 87 (1965).

[2] *Miranda v Arizona*, 384 US 436, 444; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

First-degree premeditated murder requires proof that the defendant intentionally killed the victim and that the act of killing was premeditated and deliberate. *People v Ortiz*, 249 Mich App 297, 301; 642 NW2d 417 (2002). Premeditation and deliberation require "sufficient time to allow the defendant to take a second look." *People v Anderson*, 209 Mich App 527, 537; 531 NW2d 780 (1995). The following nonexclusive list of factors may be considered to establish premeditation and deliberation: (1) the previous relationship between the decedent and the defendant, (2) the defendant's actions before and after the crime, and (3) the circumstances surrounding the killing itself, including the weapon used and the location of the wounds inflicted. *People v Coddington*, 188 Mich App 584, 600; 470 NW2d 478 (1991).

In the instant case, the prosecution presented evidence that defendant and Pilot had a tumultuous relationship, fueled by heavy alcohol consumption. Defendant's nephew and brother observed Pilot slap defendant on occasion. Pilot's father observed Pilot with black eyes a few times. Pilot's father also received several calls from Pilot over the course of the parties' relationship because she and defendant were arguing. After one such call, Pilot's father went to the house, calmed down defendant and Pilot, and, on noticing a shotgun in the garage, took it home out of concern. He returned the gun about a month before Pilot's death. Two days before her death, Pilot told a coworker that defendant had threatened to kill her. On the day of Pilot's death, as defendant acknowledged, defendant and Pilot were involved in an argument, which led to Pilot throwing a plate of food at defendant and going into the bedroom. Subsequently, Pilot was found dead on her bed with the shotgun aligned next to her body. Medical evidence indicated that the 20-gauge shotgun was placed "right up against" the center of Pilot's chest when the trigger was pulled, leaving a "relatively large wound." Afterward, the spent shell casing was manually ejected from the chamber of the shotgun; it was not an automatic weapon that would eject the shell as part of the firing process. Defendant's DNA was found on the trigger of the shotgun. Expert medical testimony indicated that because of the explosive and extensive injuries from the "tight contact gunshot," Pilot immediately collapsed and died; therefore, it was extremely improbable that she could have ejected the shell after firing, supporting the inference that someone else ejected it. Defendant and Pilot were the only two people in the house. A jury could reasonable infer from this evidence that defendant placed the 20-gauge shotgun directly on Pilot's chest, pulled the trigger, ejected the spent shell casing, and placed the gun next to her body.

Further, the evidence showed that defendant did not use the working cellular telephone in the house to call 911, but instead went to his nephew's residence and announced that Pilot had committed suicide. The officers who arrived at the scene, many with several years of experience in investigating suicide deaths involving a long gun, immediately observed that the scene was inconsistent with a suicide and appeared to have been altered. Both a medical expert and a firearms expert also agreed that the scene had been altered and there was a "cover-up." Testimony from both the responding paramedic and a law enforcement officer also indicated that Pilot had not died as recently as defendant reported. From this testimony, a jury could reasonably infer that after shooting Pilot at close range with a 20-gauge shotgun, defendant took the time to adjust the scene to stage a suicide before reporting her death. In addition, defendant gave the police three different versions of what occurred, first stating that Pilot shot herself, and ultimately stating that the gun accidentally discharged as he and Pilot struggled over it. But there was no sign of a struggle around the body or in the bedroom. At trial, defendant reverted to the assertion that Pilot committed suicide.

The reasonable inferences arising from this evidence, considered together, were sufficient to support a finding of premeditation and deliberation for first-degree murder beyond a reasonable doubt. Although defendant argues that different inferences should be drawn from the evidence, those challenges are related to the weight of the evidence rather than its sufficiency. *People v Scotts*, 80 Mich App 1, 9; 263 NW2d 272 (1977). The same challenges asserted on appeal were presented to the jury during trial. This Court will not interfere with the jury's role of determining issues of weight and credibility. *Wolfe*, 440 Mich at 514. Rather, this Court must draw all reasonable inferences and make credibility choices in support of the jury's verdict, and that deferential standard of review "is the same whether the evidence is direct or circumstantial." *Nowack*, 462 Mich at 400. Viewed in a light most favorable to the prosecution, the evidence was sufficient to sustain defendant's conviction of first-degree premeditated murder.

III. THE ADMISSION OF HEARSAY EVIDENCE

Defendant argues that the trial court abused its discretion when it determined that a statement made by Pilot to a coworker, Ashley Rolfe, was admissible under MRE 804(b)(7). At trial, Rolfe testified that two days before Pilot's death, Pilot told her, "I had to get the hell out of there. He threatened to kill me." We review a trial court's decision to admit evidence for an abuse of discretion. *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010). "A trial court abuses its discretion when its decision falls 'outside the range of principled outcomes.'" *Id*. (citation omitted).

Hearsay, which is a statement other than one made by the declarant while testifying at the trial or hearing offered to prove the truth of the matter asserted, is inadmissible at trial unless a specific exception allows its introduction. MRE 801; MRE 802; *People v Martin*, 271 Mich App 280, 316; 721 NW2d 815 (2006). MRE 804(b)(7) provides a residual or "catch-all" exception to the hearsay rule for an unavailable declarant, and allows for the admission of

> [a] statement not specifically covered by any of the foregoing exceptions but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact, (B) the statement is more probative on the point for which it is offered than any other evidence that the proponent can procure through reasonable efforts, and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. However, a statement may not be admitted under this exception unless the proponent of the statement makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the proponent's intention to offer the statement and the particulars of it, including the name and address of the declarant.

"The first and most important requirement is that the proffered statement have circumstantial guarantees of trustworthiness equivalent to those of the categorical hearsay

exceptions." *People v Katt*, 468 Mich 272, 290; 662 NW2d 12 (2003).[3] A court "should consider the 'totality of the circumstances' surrounding each statement to determine whether equivalent guarantees of trustworthiness exist." *Id*. at 291. "There is no complete list of factors that establish whether a statement has equivalent guarantees of trustworthiness," *id*., but relevant factors include:

> (1) the spontaneity of the statements, (2) the consistency of the statements, (3) lack of motive to fabricate or lack of bias, (4) the reason the declarant cannot testify, (5) the voluntariness of the statements, i.e., whether they were made in response to leading questions or made under undue influence, (6) personal knowledge of the declarant about the matter on which he spoke, (7) to whom the statements were made, and (8) the time frame within which the statements were made. [*People v Geno*, 261 Mich App 624, 634; 683 NW2d 687 (2004) (citation omitted).]

Without a showing of a particularized guarantee of trustworthiness, a statement will be deemed presumptively unreliable and therefore inadmissible. *People v Smith*, 243 Mich App 657, 688; 625 NW2d 46 (2000).

We agree with the trial court that Pilot's statement to Rolfe had sufficient guarantees of trustworthiness to be admissible at trial. The record establishes that Pilot's statement was made spontaneously. Pilot called the bar where she worked part time to ask Dick Dedic, her boss, if he could pick her up and bring her to the bar; she was not scheduled to work. Rolfe, a bartender and server, was told to make the five-minute drive to pick up Pilot. As soon as Rolfe pulled in the driveway of Pilot's residence, Pilot entered the vehicle and, without any prompting, immediately stated, "I had to get the hell out of there. He threatened to kill me." Rolfe did not ask Pilot any questions before Pilot made this statement and there is no indication that the statement was made in response to anything Rolfe said, or under any circumstances of undue influence. Although there was some indication that Pilot had been drinking, Rolfe and Dedic both testified that Pilot was not intoxicated. Pilot appeared visibly upset and concerned. She did not seem normal. Pilot made the statement to Rolfe even though Rolfe and Pilot were not friends "of any kind." It was unusual for Pilot to share something of this nature with Rolfe, and Rolfe was not a person in whom Pilot would normally confide. These facts support the admissibility of Pilot's statement. After Pilot's unprompted statement, Rolfe asked, "What?" and, instead of providing any other statements that altered her prior statement, Pilot simply repeated her prior statement that "he threatened to kill me." Thus, Pilot's statements were consistent. Further, there was no indication that Pilot or Rolfe had any bias or motive to fabricate, or that Pilot had anything to gain by falsely making this statement to Rolfe, thereby enhancing the statement's reliability and trustworthiness. Considering the totality of the circumstances, the trial court did not err in finding that the statement had sufficient indicia of reliability.

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[3] In *Katt*, 468 Mich 272, the Supreme Court discussed MRE 803(24), which is the residual exception to the hearsay rule where the availability of the declarant is immaterial. The language of MRE 804(b)(7), the residual exception to the hearsay rule when the declarant is unavailable, is identical.

We also agree with the trial court that the statement was evidence of a material fact because it was probative of defendant's premeditation, inasmuch as it showed that defendant had threatened to kill Pilot within 48 hours of her death. "A material fact is '[a] fact that is significant or essential to the issue or matter at hand.'" *Katt*, 468 Mich at 292 (citation omitted). As the court observed, the statement was particularly relevant to defendant's intent, given his defense that Pilot's death was the result of a self-inflicted wound or the accidental discharge of the shotgun. The statement was also more probative of defendant's intent than any other evidence that the prosecution could procure through reasonable efforts. This requirement "essentially creates a 'best evidence' requirement." *Id.* at 293 (citations omitted). The prosecution advised the court that no other evidence of this fact was available, and we discern no indication from the record that there was any other evidence to show that defendant had contemplated to kill Pilot within close proximity to the time of her death. Therefore, admission of the statement "serves the interest of justice." *Id.* Finally, there is no dispute that defendant had sufficient notice of the prosecutor's intent to offer Pilot's statement. Consequently, the trial court's decision to allow the evidence under MRE 804(b)(7) did not fall outside the range of reasonable and principled outcomes. *Feezel*, 486 Mich at 192.

IV. THE ADMISSION OF DEFENDANT'S STATEMENTS

Defendant next argues that statements he made to the police during an interview at the sheriff's department were improperly introduced against him. He contends that the statements were not admissible because they were made during a custodial interrogation and he was not earlier advised of his *Miranda* rights. We disagree.

"Whether a person is in custody for purposes of the *Miranda* warnings requirement is a mixed question of law and fact that must be answered independently after a review of the record de novo." *People v Cortez*, 299 Mich App 679, 691; 832 NW2d 1 (2013). The "'in-custody' determination calls for application of the controlling legal standard to the historical facts." *Id.* (citation omitted). We review for clear error a trial court's factual findings regarding the circumstances surrounding the giving of the statement. *Id.* The trial court's ultimate decision concerning a motion to suppress is reviewed de novo. *Id.*

Miranda warnings are not required unless the accused is subject to a "custodial interrogation." *People v Zahn*, 234 Mich App 438, 449; 594 NW2d 120 (1999). A custodial interrogation occurs when law enforcement officers initiate questioning after the accused "has been taken into custody or otherwise deprived of his freedom of action in a significant way." *Id.* (citation omitted). Stated differently, a person is in custody where the "person has been formally arrested or subjected to a restraint on freedom of movement or of the degree associated with a formal arrest." *People v Peerenboom*, 224 Mich App 195, 197; 568 NW2d 153 (1997). Whether the accused was in custody depends on the totality of the circumstances, but the key question in situations where the accused has not been formally arrested is whether the accused could reasonably believe that he was not free to leave. *Zahn*, 234 Mich App at 449. This inquiry "depends on the objective circumstances of the interrogation rather than the subjective views harbored by either the interrogating officers or the person being questioned." *Id.* "[T]he requirement of warnings [are not] to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect." *People v Mendez*, 225 Mich App 381, 384; 571 NW2d 528 (1997) (citation omitted).

At an evidentiary hearing, defendant did not testify, but the court heard testimony from the interviewing detective. According to the detective, after defendant's house was designated a crime scene, defendant was placed in a patrol car in the driveway of the residence to stay warm. Although the rear doors had no handles, defendant could exit the car because a deputy was always in the car. In fact, defendant left the car to urinate on occasion. For the most part, defendant slept while in the rear of the patrol car. Ultimately, the interviewing detective opened the car door, told defendant that he was not under arrest, and asked defendant if he would voluntarily accompany him to the sheriff's department to give a statement. The detective advised defendant that he wanted to talk to him about what he and Pilot had done that day. Defendant did not have a working vehicle that he could drive to the sheriff's department, so he rode with the detective. The detective's car was a "regular automobile," not a patrol car, so it had operable backdoor handles and was not equipped with a cage or other restrictive equipment. In addition to verbally being told that he was not under arrest, defendant was not restrained in any manner at the scene or during the ride. Upon arrival at the department, defendant accepted the offer of a cup of coffee and asked for a cigarette. Defendant was provided with two cigarettes, shown where he could smoke outside, and told to knock on the door when he wanted to come back inside. The outside area was not fenced in, and defendant could have simply walked away. Although defendant notes that his home was several miles away, as the trial court noted, defendant could have walked to the payphone at the gas station across the street if he wanted to call someone for a ride. The interviewing detective also testified that defendant "absolutely" would have been driven back home if he had asked. The interview lasted approximately two hours. During that period, however, defendant took at least five breaks, from five to 15 minutes each, where he freely went outside and smoked one or two cigarettes. Defendant was never handcuffed or restrained in any way during the interview.

Considering the totality of the objective circumstances in this case, the trial court did not err in concluding that defendant was not "in custody" such that *Miranda* warnings would have been required. Defendant's argument is based primarily on his trial testimony that he did not subjectively feel free to leave. However, the pertinent inquiry is objective, not subjective. *Zahn*, 234 Mich App at 449. Moreover, as the trial court noted, during defendant's recorded custodial statement, which was not admitted at trial, defendant acknowledged that he was free to leave before being given his *Miranda* rights. Consequently, because defendant was not in custody prior to that time, *Miranda* warnings were not necessary, and the trial court did not err by partially denying his motion to suppress his statements.

V. DEFENDANT'S REQUESTED JURY INSTRUCTION

Defendant argues that the trial court abused its discretion by refusing to instruct the jury on involuntary manslaughter. We disagree. Although we review questions of law pertaining to jury instructions de novo, a trial court's decision whether an instruction is applicable to the facts of the case is reviewed for an abuse of discretion. *People v Gillis*, 474 Mich 105, 113; 712 NW2d 419 (2006).

Involuntary manslaughter is a necessarily included lesser offense of first-degree murder. *People v Mendoza*, 468 Mich 527, 533, 540-541; 664 NW2d 685 (2003). Consequently, if a defendant is charged with murder, an instruction for involuntary manslaughter must be given if supported by a rational view of the evidence. *People v McMullan*, 488 Mich 922; 789 NW2d 857 (2010). As it relates to this case, involuntary manslaughter is "the unintentional killing of

another, without malice, during the commission of an unlawful act not amounting to a felony and not naturally tending to cause great bodily harm; or during the commission of some lawful act, negligently performed[.]"[4] *Mendoza*, 468 Mich at 536. "The kind of negligence required for manslaughter is something more than ordinary or simple negligence, however, and is often described as 'criminal negligence' or 'gross negligence'[.]" *People v Herron*, 464 Mich 593, 605; 628 NW2d 528 (2001) (citation omitted).

Although defendant testified at trial that Pilot's gunshot wound was self-inflicted, he argues that he was entitled to a jury instruction on involuntary manslaughter because of the evidence of his statements to the police during an interview. In one of his statements, defendant related that upon observing Pilot with a shotgun pressed against her chest, he reached for it and their mutual struggle over the gun caused it to accidentally discharge, killing Pilot. Even considering this version of events, a rational view of the evidence does not support an involuntary manslaughter instruction. Although this version would be evidence that the killing was unintentional, defendant's act of attempting to disarm his girlfriend in an effort to stop her from committing suicide would not have been an unlawful act, and there was no evidence that the act would have been negligent. To the contrary, under those facts, defendant would not have been responsible at all for Pilot's death. Consequently, no rational view of the evidence would have supported an involuntary manslaughter instruction, and the trial court did not abuse its discretion by failing to give an inapplicable charge to the jury.

VI. THE LATE ENDORSEMENT OF A JAIL INFORMANT

Next, defendant argues that the trial court abused its discretion in allowing the prosecution's late endorsement of Turner as a witness. At trial, Turner testified that he shared a common cell with defendant in the county jail, and that defendant made several inculpatory statements related to Pilot's shooting death. We review a trial court's decision to permit or deny the late endorsement of a witness for an abuse of discretion. *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008).

Not less than 30 days before the trial, the prosecutor shall provide a list of all witnesses he or she intends to produce at trial, but may add or delete witnesses upon leave of the court and for good cause shown or by stipulation of the parties. MCL 767.40a(3) and (4). The purpose of MCL 767.40a is to provide notice to the accused of potential witnesses. *People v Callon*, 256 Mich App 312, 327; 662 NW2d 501 (2003). The Legislature did not intend for MCL 767.40a to act as a bar to relevant evidence. *Id*. at 327.

The record discloses that the prosecutor first learned of Turner's identity as a potential witness shortly before trial and quickly advised the defense. Turner confirmed that he did not come forward until 10 days before trial began. As our Supreme Court has explained, MCL 767.40a "contemplates notice at the time of filing the information of known witnesses who

[4] A third basis for involuntary manslaughter, which is not implicated in this case, exists where the death was the result of the negligent omission to perform a legal duty. *Mendoza,* 468 Mich at 536.

might be called and all other known res gestae witnesses" and "imposes on the prosecution a continuing duty to advise the defense of all res gestae witnesses as they become known." *People v Burwick*, 450 Mich 281, 288-289; 537 NW2d 813 (1995). Thus, late discovery or identification of a witness may be sufficient to establish good cause. See *id*. at 284-285, and *People v Canter*, 197 Mich App 550, 563; 496 NW2d 336 (1992). On appeal, defendant does not argue otherwise, but instead asserts that Turner's late endorsement unfairly prejudiced his defense.

Regardless of whether the prosecution established good cause, a defendant must show that he was unfairly prejudiced to be entitled to any relief. *Callon*, 256 Mich App at 328. Typically, unfair prejudice results when defense counsel is unable to adequately prepare for the witness's cross-examination. *Burwick*, 450 Mich at 296. Here, the record discloses that the defense had more than a week to prepare to cross-examine Turner and had the use of a private investigator authorized by the trial court. In fact, the defense attorneys and the investigator interviewed Turner before his testimony. According to Turner, the interview lasted approximately 1-1/2 hours. The trial court required the prosecution to make a third cellmate available, whom the defense also had the opportunity to interview and ultimately called as a defense witness at trial. The third cellmate contradicted Turner's claims of his conversations with defendant. Defendant asserts that he was not able to adequately prepare for Turner's testimony because he had insufficient time to review several hours of recorded conversations between Turner and his girlfriend to hear what Turner might have discussed with his girlfriend about defendant's statements and Turner's decision to come forward. However, the value of the jail recordings is speculative, at best. Moreover, the prosecution determined the identity of Turner's girlfriend and provided her name and address to the defense. The girlfriend refused to speak with anyone. This matter was raised during cross-examination, and Turner testified that he did not know why his girlfriend would not talk to the parties to verify his story. Thus, the jury was well aware of this matter. Given the record before this Court, there is no basis for concluding that the prosecution acted improperly or that defendant was unfairly prejudiced by Turner's status as a witness.

VII. LIMITATION ON CROSS-EXAMINATION

Defendant also argues that the trial court erred by limiting his cross-examination of Turner, and that the limitation denied him his constitutional right of confrontation. Again, we disagree. At trial, defendant argued that he should be permitted to question Turner about his sentencing guidelines if he pleaded guilty to the charges against him. Therefore, that evidentiary issue is preserved for review. However, defendant did not raise the argument that precluding this line of questioning would violate his constitutional right of confrontation, leaving that argument unpreserved. An objection on one ground is insufficient to preserve an appellate challenge based on a different ground. *People v Bulmer*, 256 Mich App 33, 35; 662 NW2d 117 (2003). We review defendant's preserved evidentiary issue to determine whether the trial court abused its discretion by limiting the scope of defendant's cross-examination. *People v Unger*, 278 Mich App 210, 216; 749 NW2d 272 (2008). Defendant's unpreserved constitutional claim is reviewed for plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 752-753, 763-764; 597 NW2d 130 (1999).

Although a defendant has a constitutional right to confront his accusers, US Const, Am VI; Const 1963, art 1 § 20; *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993),

he must still comply with procedural and evidentiary rules established to assure fairness and reliability in the verdict. See *People v Hayes*, 421 Mich 271, 279; 364 NW2d 635 (1984), and *People v Arenda*, 416 Mich 1, 8; 330 NW2d 814 (1982). To this end, a court has latitude to impose reasonable limits on cross-examination, *People v Sexton*, 250 Mich App 211, 221; 646 NW2d 875 (2002), and must "exercise reasonable control over the mode . . . of interrogating witnesses." MRE 611(a). In this case, the trial court did not preclude defendant from presenting evidence challenging Turner's credibility and bias, but rather only precluded admission of evidence that was not relevant under the circumstances of this case.

At trial, Turner testified regarding statements that defendant allegedly made to him about this case while Turner was in jail awaiting trial on charges on manufacturing more than 200 marijuana plants and felony-firearm. On direct examination, Turner explained that he was not offered anything in exchange for his testimony, and was motivated to come forward after discussing the matter with his girlfriend. With regard to any plea offers, Turner testified that several months earlier, he had been offered, but rejected, a plea agreement whereby he would be permitted to plead guilty to the charged offense of manufacturing 200 or more plants of marijuana in exchange for dismissal of the felony-firearm charge. Tuner stated that he rejected the offer because "the lab only had reports back from 80 to 100 plants," and he was scheduled to be tried on the following day. In response to defense counsel's inquiry on cross-examination about whether Turner's lawyer had discussed "what we call sentencing guidelines," Turner responded, "No. I mean, it's been gone over several times, but it's been back and forth, so I am not really sure on that." Thereafter, defense counsel was precluded from continuing a line of questioning about "what are sentencing guidelines" and what Turner's guidelines would be if he pleaded guilty. Under the circumstances, defendant has not established that Turner's conjecture of what his sentencing guidelines might be if he pleaded guilty had any significant relevance for the purpose of challenging Turner's credibility and bias. MRE 401.

Further, the trial court did not preclude defendant from otherwise challenging Turner's credibility and bias. Counsel was allowed to question Turner about his current charges, any plea bargaining, his failure to come forward months earlier, his girlfriend's refusal to talk to anyone to verify his story, and his hope to gain favor by coming forward shortly before his scheduled trial. Counsel elicited that Turner did not initially think that statements about murder were "a big deal," that he had no real explanation for his failure to come forward earlier, and that he refused to allow the defense to talk to his former attorney. Also, defense counsel questioned Turner about how and why he and defendant's third cellmate did not hear the conversations that Turner claimed occurred. Given this record, the trial court's decision to preclude irrelevant testimony did not fall outside the range of reasonable and principled outcomes, and the decision did not deprive defendant of his right of confrontation.

Affirmed.

/s/ Mark T. Boonstra
/s/ Mark J. Cavanagh
/s/ /E. Thomas Fitzgerald