

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LANDIS ELLIS GRADY,

Defendant-Appellant.

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UNPUBLISHED

January 25, 2000

No. 208909

Ingham Circuit Court

LC No. 97-072102 FH

Before: Gage, P.J., and Fitzgerald and Markey, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second degree murder, MCL 750.317; MSA 28.549, intentional discharge of a firearm at a dwelling, MCL 750.234b; MSA 28.431(2), and conspiracy to intentionally discharge a firearm at a dwelling, MCL 750.157a, 750.234b; MSA 28.354(1), 28.431(2). He was sentenced to prison terms of fifteen to twenty-five years, two to four years, and thirty-one to forty-eight months for his respective convictions. Defendant appeals as of right. We affirm.

This case arises from the shooting death of Esmeralda Robles at approximately 12:30 a.m. on April 26, 1997. The prosecution presented evidence that defendant was the driver of the car from which codefendant Noah Shelton alit and to which he returned after firing several shots from a rifle at a house. The victim, who was sleeping on a couch, was struck by three bullets and died as a result of a gunshot wound to the chest and associated injuries. An eyewitness to the shooting gave a statement to the police and identified the car and defendant the next morning. In his initial statement to police, defendant denied any involvement in the shooting and indicated that he had been with friends from 4:00 p.m. on April 25 until 3:00 a.m. on April 26. After being informed that detectives were unable to verify defendant's statement, defendant gave a second statement. Defendant stated that he was the driver of the car identified by the eyewitness and was present at the shooting. Defendant further stated that he gave a false statement at first because he was afraid, and that the second statement was true. At trial, defendant testified that he had no involvement with the shooting and that he confessed because he felt threatened by detectives. He testified that his first statement was truthful.

Defendant first argues that the trial court erred by informing the jury that the court determined that the action of the detectives in connection with defendant's statement "complied with the law."

A *Walker* hearing was held outside the presence of the jury to determine the voluntariness of two taped statements defendant gave to detectives. Detective Koenigsnecht testified that he advised defendant of his *Miranda* rights before the first statement at 1:27 p.m. and that defendant indicated that he understood the rights and waived the rights. The first statement concluded at 2:08 p.m. At 3:40 p.m., defendant gave a second statement, but was not readvised of his rights before this statement. Defendant testified that the second statement was untrue and was the product of police intimidation. The trial judge found the statements voluntary.

In his opening statement, defense counsel told the jury that the conduct of the investigating detective was "inappropriate" and that defendant's second statement was coerced. During his cross-examination of the detectives, defense counsel focused heavily on the fact that defendant was not readvised of his *Miranda* rights before the second statement. The prosecutor responded as follows:

I understand that some of the circumstances of the confession can come in for the jury to consider, but the legal determination as to whether or not its voluntary is one for the Court to make . . .

If testimony is elicited that the cops did not re-advise him of his *Miranda* rights, this implies that the cops did something wrong, when the Court has found that they didn't do anything wrong. I think it would be overly prejudicial in this case. Certainly the surroundings and their demeanor, et cetera, that can be admissible, but whether or not *Miranda* rights were re-advise has no bearing.

Accordingly, the prosecutor asked for limits on the type of questions that could be asked of witnesses and requested a limiting instruction to be read with CJI2d 4.1<sup>1</sup>. The trial court declined to limit the questioning of the witnesses regarding the circumstances surrounding the statements, but amended paragraph one of CJI2d 4.1 to provide, in part, that "The Court has determined that the action of the detectives in connection with the statement complied with the law." The court then went on to instruct the jury that they still could not consider defendant's statements unless they found defendant actually made a statement and whether it was true.

It is error requiring reversal for a trial judge to inform a jury that the defendant's statement has been found to be voluntary in a pretrial *Walker* hearing. See, e.g., *People v Mosley (On Remand)*, 72 Mich App 289; 249 NW2d 393 (1976); *People v Gilbert*, 55 Mich App 168; 222 NW2d 305 (1974). However, this Court has held that when the fact that the defendant made the statement is not disputed, the rationale of the cases cited above largely disappears and, although the trial judge should not inform the jury of his earlier ruling, such comments are not reversible error. *People v Corbett*, 97 Mich App 438, 443; 296 NW2d 64 (1980). Here, as in *Corbett*, defendant admitted that he made the statement, but contended that it contained untruths. The jury was properly instructed that it was the jury's function to determine the weight and credibility of defendant's statement. The fact that the jury had to accept that the detectives acted lawfully in obtaining defendant's statement did not infringe upon

the function of the jury to determine the weight and credibility of the statement. Under these circumstances, we conclude that the instruction as given did not constitute error requiring reversal.

Defendant also contends that the trial court erred by refusing to instruct on the cognate lesser included offense of statutory involuntary manslaughter. Specifically, defendant requested the trial court to give CJI2d 16.11 regarding death from a firearm pointed intentionally but without malice. See MCL 750.329; MSA 28.561. In promulgating this section, the Legislature intended to punish intentional pointing of a firearm that results in death even though defendant did not act with criminal intent sufficient for conviction under common-law involuntary manslaughter. *People v Heflin*, 434 Mich 482, 504; 456 NW2d 10 (1990). The section was designed to apply in cases of the careless use of firearms where the accused intended to aim at the victim but accidentally fired. *People v Doss*, 78 Mich App 541, 553; 260 NW2d 880, rev'd on other grounds 406 Mich 90 (1977).

Here, defendant never argued that the shooting was accidental or unintentional, and no evidence was presented in that respect. Rather, defendant steadfastly maintained throughout trial that he did not participate in the shooting. The crime of statutory involuntary manslaughter was neither supported by the evidence nor presented to the jury by the defendant or the prosecutor. Consequently, the trial court properly refused to instruct on the offense. *People v Pouncey*, 437 Mich 382, 387; 471 NW2d 346 (1991); *People v Moore*, 189 Mich App 315, 319; 472 NW2d 1 (1991).

Last, defendant asserts that the trial court erred in refusing to appoint for him an expert witness in the field of “human factors” to determine whether the eyewitness could have seen what he testified that he saw. We disagree. MCL 775.15; MSA 28.1252 requires a defendant to show to the satisfaction of the trial judge “that he cannot safely proceed to a trial [without the proposed witness.]” Here, the concern was not the reliability of eyewitness testimony in general, but rather whether the eyewitness could have observed what he claimed to have observed given the physical circumstances at the time of the observation. The lack of an expert did not prevent defendant from safely proceeding to trial because defendant was able to thoroughly cross-examine the eyewitness regarding his ability to make observations under the conditions present at the time and to call into question the eyewitness’ identification of defendant.

Affirmed.

/s/ Hilda R. Gage  
/s/ E. Thomas Fitzgerald  
/s/ Jane E. Markey

<sup>1</sup> CJI2d 4.1 concerns a defendant’s statements as evidence against the defendant.