

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE TERRY LOUIS,

Defendant-Appellant.

UNPUBLISHED

May 27, 1997

No. 195616

Delta Circuit Court

LC No. 96-5916 FH

Before: O'Connell, P.J., and Sawyer and Markman, JJ.

PER CURIAM.

Defendant appeals as of right his conviction of breaking and entering a building with the intent to commit larceny therein. MCL 750.110; MSA 28.305. Defendant was sentenced as an habitual offender, fourth offense, MCL 769.12; MSA 28.1084, to five to ten years' imprisonment. We affirm.

The mirrors from the men's restroom at the Gladstone campground were stolen at some point between November 1992 and May 1993. Because the campground was closed during the winter months, the theft was not discovered until May 1993. While conducting a separate investigation into the criminal activities of defendant and Phyllis and Bill Godfrey, the Michigan State Police found the mirrors in the basement of the Godfreys' home, where defendant had lived during the winter of 1992 and the spring of 1993. The Godfreys testified at defendant's trial that defendant told them that he had stolen the mirrors from the campground and that he had hung them in their basement so that he and Bill Godfrey could use the basement as a weight room. Defendant, however, testified that the Godfreys were mistaken. Defendant said that while walking through the campground in the spring of 1993, he found the mirrors lying on some piles of leaves and sticks that had been raked together the previous winter.

At trial, Phyllis Godfrey testified outside the presence of the jury that although the prosecution had promised her nothing, she believed that it would treat her more leniently if she cooperated by testifying against defendant. Yet, the court refused to allow defendant to cross-examine Phyllis regarding her belief that the prosecution would treat her leniently with respect to her other criminal activities if she testified against defendant. As defendant correctly contends, this refusal denied

defendant the right to confrontation that is provided by the United States and Michigan Constitutions. US Const, Am VI; Const 1963, art 1, § 20. The right to cross-examination is the primary interest secured by the right to confrontation. *People v Holliday*, 144 Mich App 560, 566; 376 NW2d 154 (1985). The party that has the right to cross-examination has the right to elicit from the witness anything that tends to affect the witness' credibility. *People v Mumford*, 1832 Mich App 149, 153; 455 NW2d 51 (1990). Phyllis Godfrey's belief that the prosecution would treat her more leniently if she testified against defendant tended to affect her credibility because it suggested that she had a motivation to lie about defendant's involvement regarding the mirrors. Defendant had the right to elicit this information from her through cross-examination, and the trial court's refusal to allow him to do so constituted a denial of defendant's right to confrontation. However, this error was harmless because Bill Godfrey's testimony implicating defendant was nearly identical to that of his wife and could have been used by the jury as a basis for convicting defendant even if her testimony was found to be incredible. When a limitation on cross-examination is harmless or does not result in prejudice, reversal is not required. *Holliday, supra*, 144 Mich App at 567.

Defendant also argues that by sentencing him as an habitual offender without referring to the Michigan Sentencing Guidelines, the trial court violated his right to equal protection. Defendant asserts that persons convicted as habitual offenders are treated differently from others facing sentencing because a sentencing court may sentence habitual offenders without referring to the guidelines but may not depart from the guidelines on the basis of prior convictions when sentencing other defendants. However, this Court has previously rejected equal protection challenges raised in the context of offenses to which the guidelines were inapplicable. See, e.g., *People v Weathersby*, 204 Mich App 98, 114; 514 NW2d 493 (1994). Further, our Supreme Court's recent decision in *People v Mitchell*, 454 Mich 145, 176-178; 560 NW2d 600 (1997), largely eviscerating the review of guidelines scoring decisions, seemingly renders defendant's contention moot.

Affirmed.

/s/ Peter D. O'Connell
/s/ David H. Sawyer
/s/ Stephen J. Markman