

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GEORGE TERRY LOUIS,

Defendant-Appellant.

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UNPUBLISHED

September 25, 1998

No. 195616

Delta Circuit Court

LC No. 96-005916 FH

ON REMAND

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

PER CURIAM.

In 1996, defendant was convicted of breaking and entering a building with 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. In his appeal as of right, defendant argued that the trial court’s error in prohibiting cross-examination of a prosecution witness regarding that witness’ incentives to testify against defendant required reversal, and that his sentence under the habitual offender statute apart from the sentencing guidelines violated constitutional equal-protection principles. In an unpublished opinion per curiam, decided May 27, 1997 (Docket No. 195616), this Court affirmed defendant’s conviction and sentence.

Defendant, proceeding *in propria persona*, then sought leave to appeal to the Supreme Court, presenting only the issue concerning cross-examination of the prosecution witness for bias. The Supreme Court, by order of June 16, 1998, in lieu of granting leave, remanded the case to this Court with instructions to consider that issue in light of *People v Anderson*, 446 Mich 392; 521 NW2d 538 (1994), and *People v Belanger*, 454 Mich 571; 563 NW2d 665 (1997). We affirm.

The mirrors from the men’s restroom at the Gladstone campground were stolen during the winter of 1992-1993. While conducting a separate investigation suspected criminal activities of Phyllis and Bill Godfrey, police found the mirrors in the basement of the Godfreys’ home, where defendant had lived from late 1992 through early 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 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, stating that he found the mirrors lying on some piles of leaves and sticks while walking through the campground in the spring of 1993.

At trial, Phyllis Godfrey testified outside the presence of the jury that although the prosecution had promised her nothing, she believed that she would receive more lenient treatment if she cooperated by testifying against defendant. However, the court refused to allow defendant to cross-examine Phyllis regarding her belief that the prosecution would treat her leniently with regard to her other suspected criminal activities if she testified against defendant. In the course of deliberating, the jury asked to review Phyllis Godfrey's testimony concerning defendant's statements concerning how he obtained the mirrors.

The trial court's refusal to allow defendant to cross-examine Phyllis Godfrey for bias was, in our judgment, a denial of defendant's right to confront adverse witnesses. US Const, Am VI; Const 1963, art 1, § 20; *People v Holliday*, 144 Mich App 560, 566; 376 NW2d 154 (1985). A party has the right to cross-examine an adverse witness concerning any matter that tends to bear on the witness' credibility. *People v Mumford*, 183 Mich App 149, 153; 455 NW2d 51 (1990). However, the question remains whether the trial court's error requires reversal or may be considered harmless.

Some errors, such as denial of the right to counsel or failure of the judge to be impartial, are structural defects in the trial itself and can never be harmless. *Anderson, supra*, at 405, citing *Arizona v Fulminante*, 499 US 279, 309; 111 S Ct 1246; 113 L Ed 2d 302 (1991). However, errors occurring during the presentation of evidence to the jury may normally be assessed in light of other evidence presented to see if the error was harmless. *Id.*, citing *Fulminante, supra* at 307-308. The error here at issue falls into this latter category. To determine whether a constitutional, but non-structural error was harmless, a reviewing court must determine beyond a reasonable doubt whether there was any reasonable possibility that the error might have contributed to the conviction. *People v Belanger, supra* at 576, citing *Anderson, supra* at 405.

Upon further review of this matter occasioned by the Supreme Court's remand order, we do not find reason to depart from this Court's original decision. The harmless error standard set forth in the cases identified in the remand order represents the standard initially applied by this Court, even if these cases were not explicitly noted. We conclude that the error here was harmless on the basis of the following considerations:

(1) Phyllis Godfrey's testimony was identical in all material respects with that of her husband, Bill Godfrey. There is no evidence of collusion in this regard and Bill Godfrey initially provided his description of events to the police *prior* to any commitments being made to him by the police or prosecutors.

(2) Both of the Godfreys' testimony was corroborated, albeit in limited respects, by the testimony of Rose Siedlicki, Phyllis Godfrey's mother.

(3) Defendant himself corroborated much of the Godfreys' testimony by admitting that he was the source of the stolen items found in the Godfreys' house, although he differed as to how he explained

to the Godfreys the means by which they had come into his possession. With respect to such disparity, the Godfreys', as opposed to defendant's, version of defendant's explanation, rendered the Godfreys themselves *more* rather than *less* potentially criminally culpable.

(4) Phyllis Godfrey testified outside the presence of the jury that she did not expect to be charged for a criminal offense and that she had not been promised anything by the prosecutor or the police. She testified that she "voluntarily" provided her testimony to the police, that "nobody said nothing to me," that "nothing was specified for me" and that there had been "no discussion . . . about an agreement to reduce the charges." This was corroborated by Detective Terrance John Saunders of the Michigan State Police.

(5) Defendant's own testimony, in light of the testimony of several campground officials, was arguably incredible. In order to believe defendant, the jury would have had to find that a bathroom at the campground was forcibly broken into, with an attached hasp and lock destroyed, that four mirrors were methodically unscrewed from the wall and removed, that the mirror thief then fled 35-40 feet before choosing to discard the mirrors on the ground, that the mirrors were unbroken, and that defendant happened by and found the mirrors. Further, the jury would have had to believe defendant's testimony that a wrist tendon injury, which he suffered at virtually the same time as the theft, was related, not to the theft of the mirrors, but to a weightlifting injury, an injury unnoticed by his principal weightlifting partner.

(6) The trial court purported to limit cross-examination here largely on the grounds that it was convinced that additional examination would inevitably have required reference to other crimes committed by defendant, which would have operated to his prejudice.

For these reasons, we are not persuaded under the standards of *Anderson* and *Belanger* that the outcome of defendant's trial would have been different absent the trial court's error in limiting cross-examination of Phyllis Godfrey.

Affirmed.

/s/ Peter D. O'Connell

/s/ David H. Sawyer

/s/ Stephen J. Markman