

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JAMES CRAIG CRISTINI,

Defendant-Appellant.

UNPUBLISHED

February 25, 2000

No. 188079

Macomb Circuit Court

LC No. LC No. 94-002485-FC

ON REMAND

Before: Gribbs, P.J., and McDonald and Talbot, JJ.

PER CURIAM.

In *People v Cristini*, an unpublished per curiam opinion of the Court of Appeals, issued 7-17-98 (Docket No. 188079), we previously affirmed defendant's convictions for second-degree murder, MCL 750.317; MSA 28.549, mutilation of a dead body, MCL 750.160; MSA 28.357, and habitual offender, second offense, MCL 769.10; MSA 28.1082. Pursuant to an order of our Supreme Court, this case has been remanded to us for "plenary consideration of issues II through IV of defendant's brief on appeal." 461 Mich 906 (1999). We again affirm.

As we stated in our previous opinion:

Defendant's convictions arise out of the killing of James Scott Bussell, who died of blunt force injuries to his head after being repeatedly kicked by defendant in a auto body shop owned by Tayser Mona in the early morning hours of January 17, 1994. At trial, Mona was the key prosecution witness testifying pursuant to an agreement with the prosecutor following his convictions for mutilation of a dead body and habitual offender, fourth offense arising from his involvement in the incident. See *People v Mona*, unpublished opinion per curiam of the Court of Appeals, issued September 30, 1997 (Docket No. 188075).

According to Mona, on January 16, 1994, defendant, Mona and Bussell spent the late afternoon together at the Oakland Mall, purchasing merchandise with bad checks. Thereafter, the threesome went together in Mona's car to various places,

including Mona's home. Defendant, Mona and Bussell then went to "Tycoon's," a topless bar, where they stayed until closing time. After leaving the bar, between 2:00 and 3:00 a.m. on January 17, the threesome went together in Mona's car to his collision shop located on Dequindre just north of Nine Mile to make calls to several "escort services." Mona testified that while he was on the phone, he saw Bussell stand up and push defendant. In response, defendant hit Bussell in the face, causing Bussell to fall to the floor. At that point, Mona saw defendant, who was wearing cowboy boots, repeatedly kick Bussell in the head. When Mona asked them to stop fighting, defendant ceased kicking Bussell, who was injured and lying on the floor. However, according to Mona, defendant again started kicking Bussell, about two or three times. After defendant sat down in response to Mona's request to stop hitting Bussell, defendant got up again and began kicking Bussell. Mona then went to the back of his shop to get some ice, returning with a rag with cold water on it. When Mona returned, defendant, who was standing over Bussell, told Mona that Bussell was dead. At that point, defendant again kicked Bussell very hard in the head. Subsequently, defendant asked Mona to let him use his car to move Bussell's body.

Thereafter, Mona assisted defendant in moving Bussell's body to his car and transporting the body to an alley near Seven Mile and John R in Detroit. Placing the body next to a dumpster, defendant poured lacquer thinner over the body and set it on fire. Mona and defendant then returned to the collision shop to clean up the blood stains on the floor and to destroy any evidence that might implicate them in Bussell's death. Next, Mona and defendant drove to a motel on Eight Mile and Dequindre, where they threw out a piece of carpeting that was used to wrap the deceased's body. As they drove along Eight Mile, Mona and defendant also tossed out the deceased's personal effects, bloody clothes and rags through the car window.

According to Mona, he and defendant then went to a White Castle at Eight Mile and Gratiot, where defendant bought hamburgers to bring back to the shop for a final look. Then, defendant and Mona went to the Oakland Mall to retrieve Bussell's car. Mona testified that he then followed defendant driving Bussell's car to a gasoline station on Woodward and Eleven Mile Road to buy a gas can and gasoline. According to Mona, defendant went into the station, bought the gas can and pumped the gas. After purchasing the gasoline, Mona followed defendant in Bussell's car to another location in Detroit. There, defendant poured gasoline into Bussell's car and then set it on fire. [*Cristini, supra*, slip op, pp 1-2.]

On remand, we first consider whether the trial court denied defendant a fair trial when it allowed the prosecutor to elicit the opinion testimony of four police officers in this case. Our review of the challenged testimony indicates that the trial court did not abuse its discretion in permitting the prosecutor to elicit the testimony in question. MRE 702; *People v Beckley*, 434 Mich 691, 711; 456 NW2d 391 (1990). Moreover, we note that any error pertaining to the admission of the officers' testimony was harmless because defendant cannot show that it was more probable than not that any error affected the

outcome. *People v Lukity*, 460 Mich 484; 596 NW2d 607 (1999). As we previously observed, applying the harmless error standard set forth in *People v Mateo*, 453 Mich 203; 551 NW2d 891 (1996) in determining whether the trial court's error in admitting the bad-acts evidence was harmless, "the prosecution's presentation of Mona's testimony coupled with the testimony of other witnesses' corroborating Mona's version of the events showed that it is highly probable that the error did not contribute to the verdict." *Cristini, supra*, slip op, p 4. A fortiori, under the harmless error standard articulated in *Lukity*, defendant cannot show that any error was outcome determinative.

The trial court also did not abuse its discretion in not allowing defendant to call a cosmetologist to offer expert testimony as to the rate of hair growth because the proposed witness could offer only speculative generalizations. *Beckley, supra*.

In addition, there was no abuse of discretion when the trial court did not allow into evidence a daily time sheet from Amore Car Wash for January 17, 1994 as a business record under MRE 803(6). Although defendant claims that the time slip was prepared in the regular course of business, the proposed document was properly excluded because it lacked trustworthiness. *Solomon v Schuell*, 435 Mich 104, 120; 457 NW2d 669 (1990).

The trial court also did not abuse its discretion in refusing to allow defendant to present evidence that Mona attacked him in jail because the incident was not relevant under MRE 401. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995). In any event, we note that an investigation conducted by the Sheriff's Department's into the incident concluded that defendant, not Mona, was the instigator.

Next, there was no error when the trial court did not allow defense counsel to cross-examine Mona about pending fraudulent check charges. See *People v Falkner*, 389 Mich 682, 695; 209 NW2d 193 (1973).

Finally, contrary to defendant's claim, the trial court's failure to give a special cautionary instruction sua sponte to the jury concerning accomplice testimony did not warrant reversal. *People v Buck*, 197 Mich App 404, 415; 496 NW2d 321 (1992). As we already observed, the testimony of other witnesses corroborated Mona's version of the events. *Cristini, supra*, slip op, pp 4-5. Because the issue of defendant's guilt was not "closely drawn," the trial court's failure to give the instruction sua sponte did not warrant reversal. *Id.*

Affirmed.

/s/ Roman S. Gribbs
/s/ Gary R. McDonald
/s/ Michael J. Talbot