

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KRISTOPHER M. COLLINS,

Defendant-Appellant.

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UNPUBLISHED

September 19, 2000

No. 214181

Oakland Circuit Court

LC No. 97-154595-FH

Before: Gribbs, P.J., and Neff and O'Connell, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial conviction for assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279. Defendant was sentenced to four to ten years' imprisonment. We affirm.

On appeal, defendant argues that the trial court abused its discretion in finding that the prosecution exercised due diligence in producing an eyewitness for trial. While the due diligence issue is arguable, we find any error harmless beyond a reasonable doubt. It is clear from the record of the preliminary examination that defense counsel effectively cross-examined the witness and that his testimony was merely cumulative. Thus, any error in admitting the preliminary examination testimony was harmless.

Because the preserved claim of error is one of nonstructural constitutional magnitude (right to confrontation), the prosecution must show that the error was harmless beyond a reasonable doubt. *People v Anderson (After Remand)*, 446 Mich 392, 405-406; 521 NW2d 538 (1994). This entails that the prosecution demonstrate that there is no reasonable possibility that the challenged evidence might have contributed to the conviction. *Id.* at 406. The preliminary examination testimony was cumulative. The testimony that defendant hit or pushed the victim, knocking him to the pavement, and continued to hit him after he was down, was uncontroverted. Defendant testified on his own behalf and admitted as much. Other witnesses, including defendant's friend and the victim's wife, testified in accord. Because the challenged testimony was cumulative, we find no prejudice to defendant. *People v Rodriguez (On Remand)*, 216 Mich

App 329, 332; 549 NW2d 359 (1996); *People v Forston*, 202 Mich App 13, 18; 507 NW2d 763 (1993).

Affirmed.

/s/ Roman S. Gibbs

/s/ Janet T. Neff

/s/ Peter D. O'Connell