STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED October 27, 2000
v	No. 211976 Genesee Circuit Court
LARRY CLARK CHENAULT, Defendant-Appellant.	LC No. 97-001213-FH

Before: Collins, P.J., and Jansen and Zahra, JJ.

JANSEN, J. (*dissenting*).

I respectfully dissent because I do not believe that the error in allowing the investigating police officer to testify with regard to which criminal statute had been violated is harmless. As noted by the majority, the police officer testified that he classified the complaint as "strong-arm robbery"[1] and further explained why he so classified the crime in this manner. I agree with the majority that the trial court abused its discretion in allowing the police officer to so testify because the police officer's opinion was not based on his own perception and, I would add, that this testimony concerned the only issue at trial, namely, whether defendant committed an unarmed robbery or a larceny as he argued below.

Salvati's and Davis' testimony notwithstanding, there were important discrepancies between them regarding defendant allegedly trying to hit Salvati with the cash register drawer. Moreover, the trial court's instructions to the jury probably reinforced the improper testimony, rather than diminish it. After initially instructing the jury to strike the comment of "strong-armed robbery" by the police officer, the trial court then allowed the prosecutor to question the police officer why he classified the complaint in that manner. I do not see why the police officer's reason for so classifying the complaint was relevant to any issue in this trial. The police officer did not perceive the events.

Consequently, I would find that it affirmatively appears that the error in permitting the police officer to testify in this manner resulted in a miscarriage of justice. *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999). In other words, the weight and strength of the untainted evidence is not

[1] It goes without saying that there is no such crime as "strong-arm robbery."

overwhelming here because the two witnesses directly involved did not testify in consistent manners. *Id.* Thus, the error is clearly prejudicial and I do not find the trial court's instructions to be sufficient to eradicate the prejudice. Thus, it is more probable than not that the error was outcome determinative and defendant is entitled to a new trial. *Id.*, pp 495-496.

I would reverse and remand for a new trial.

/s/ Kathleen Jansen