

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EVERETT L. SMITH,

Defendant-Appellant.

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UNPUBLISHED

April 30, 2002

No. 228275

Wayne Circuit Court

LC No. 99-006891

Before: Jansen, P.J., and Holbrook, Jr., and Griffin, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction on two counts of assault with intent to do great bodily harm less than murder, MCL 750.84, and one count of possession of a firearm during commission of a felony (felony-firearm), MCL 750.227b(1). Defendant was sentenced as a second habitual offender, MCL 769.11, to sixteen months to fifteen years in prison on each assault count, to be served concurrently. Defendant also was sentenced to two years' imprisonment on the felony-firearm charge. In addition, defendant pleaded guilty to one count of possession of a firearm by a felon, MCL 750.224f, for which the trial court sentenced him to six to sixty months in prison, to run concurrent with the assault sentences. We affirm.

Defendant's convictions stem from a shooting that occurred on July 2, 1999. The victims, Billy Todd and Karah Haight, were attacked while driving in Todd's car. Defendant contends the trial court violated his right to confront an adversarial witness by improperly limiting his ability to question Todd. We disagree. Todd identified defendant as one of his attackers. Before the jury was empanelled, co-defendant Lashawn Thomas moved in limine to exclude evidence of an armed robbery charge pending against him. The trial court granted Thomas' motion. The alleged victim of that crime was Todd's brother. Defendant asserts he intended to challenge Todd's identification through questioning him about the pending armed robbery charge. Defendant contends that he was barred from doing so because the court concluded the testimony would violate the court's ruling on Thomas' motion in limine.

Because defendant failed to preserve this issue by objecting below, our review is limited to plain error affecting substantial rights. *People v Carines*, 460 Mich 750, 764; 597 NW2d 130 (1999). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain . . . , 3) and the plain error affected substantial rights. . . . The third requirement generally requires a showing of prejudice . . . ." *Id.* at 763. Further, if the three elements of the plain error rule are established, "[r]eversal is warranted only

when the plain, forfeited error resulted in the conviction of an actually innocent defendant or when an error “““seriously affect[ed] the fairness, integrity or public reputation of judicial proceedings’ independent of the defendant’s innocence.””” *Id.* at 763-764, quoting *United States v Olano*, 507 US 725, 736-737; 113 S Ct 1770; 123 L Ed 2d 508 (1993) (quoting *United States v Atkinson*, 297 US 157, 160; 56 S Ct 391; 80 L Ed 555 [1936]).

Criminal defendants are guaranteed the right to be confronted with the witnesses against them. US Const, Am VI; Const 1963, art 1, § 20. “The central concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact.” *Maryland v Craig*, 497 US 836, 845; 110 S Ct 3157; 111 L Ed 2d 666 (1990). The right to confront one’s accusers includes the right to subject witnesses to cross-examination. *Id.* at 846, 851; *People v Pesquera*, 244 Mich App 305, 309; 625 NW2d 407 (2001).

The record does not support defendant’s contention that the trial court limited his opportunity to cross-examine the witness. On the contrary, the trial court allowed defense counsel to question the witness about a possible connection between the robbery of his brother and his identification of defendant, and allowed the witness to respond. Although two objections were lodged against defense counsel’s questions, the trial court did not grant either.

Moreover, the record reveals that any limits placed on defense counsel’s questioning were self-imposed. After the witness indicated that the robbery of his brother had not influenced his identification of defendant, defense counsel voluntarily withdrew the question about the robbery and stated he would not pursue further questioning on the identification issue.

Affirmed.

/s/ Kathleen Jansen  
/s/ Donald E. Holbrook, Jr.  
/s/ Richard Allen Griffin