

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LONNIE REU CASH,

Defendant-Appellant.

UNPUBLISHED

May 3, 2002

No. 230526

Wayne Circuit Court

LC No. 99-012607

Before: White, P.J., and Murphy and Fitzgerald, JJ.

WHITE, P.J. (*concurring in part and dissenting in part*).

I agree that defendant failed to show that he is entitled to a new trial based on newly discovered evidence. I would, however, remand for a *Ginther*¹ hearing on the ineffective assistance of counsel issue.

It appears that counsel knew of the existence of Karen, the bar owner, but failed to interview her. Counsel for co-defendant made an offer of proof at the conclusion of trial, asserting that Karen would have testified that she was in the bar on the night of the incident and that she observed a bulge in the waistband of the victim that she believed to be a gun. Defendant denied having a gun and denied that co-defendant had a gun, and no one except the victim saw defendant or codefendant with a gun. Defendant testified that the victim produced the gun.

I conclude that defendant has made a sufficient showing that counsel's performance fell below an objective standard of reasonableness and that but for counsel's error, there existed a reasonable probability that the result would have been different, *People v Pickens*, 446 Mich 298; 521 NW2d 797 (1994), to warrant remand for a *Ginther* hearing.

Lastly, while I agree that reversal for prosecutorial conduct is not warranted in this case in light of defendant's failure to object and the heated nature of the arguments, I conclude that the prosecutor's references to counsel as a "trickster" and a "smiler" were inappropriate under any circumstances.

/s/ Helene N. White

¹ *People v Ginther*, 390 Mich 436; 212 NW2d 922 (1973).

