

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

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LONNIE JOHN TAYLOR, JR.,

Defendant-Appellant.

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UNPUBLISHED

January 27, 2004

No. 244514

Bay Circuit Court

LC No. 02-001092-FC

Before: O’Connell, P.J., and Wilder and Murray, JJ.

PER CURIAM.

Defendant appeals as of right from his jury trial convictions<sup>1</sup> for armed robbery, MCL 750.529, and first-degree home invasion, MCL 750.110a(2). Defendant was sentenced to 216 to 360 months’ imprisonment for the armed robbery conviction and 144 to 240 months’ imprisonment for the home invasion conviction. We affirm.

**I. Material Facts and Proceedings**

On April 23, 2001, Peter Gillard and Brandon Hodge were living in an upstairs apartment in Bay City. Gillard and Hodge were sitting on the couch watching a movie when their front door was “kicked in” and three men entered the apartment, each armed with a weapon and wearing a black transparent covering over their faces. According to Gillard and Hodge, one of the men had a silver gun, another had a black gun, and the third had a large kitchen knife. The men took Gillard and Brandon to two separate parts of the apartment and proceeded to ransack the apartment.

While the men were in the apartment, two of them referred to each other as “L.T.” and “Duke.” Gillard described Duke as the person carrying the knife, and further testified that L.T. was wearing a red shirt and carrying a gun that looked like a “Glock gun” or a “policeman’s gun.” Hodge testified that he immediately recognized two of the individuals, and that the person

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<sup>1</sup> Defendant was previously tried for the charges of which he was convicted; however, the trial resulted in a hung jury.

brandishing the knife was “Duke,”<sup>2</sup> who went to high school with Hodge, and that the person wearing the red shirt was defendant, with whom Hodge had grown up.

Duke instructed Gillard to lie down on the ground, briefly held and touched the knife to his neck, and then went through Gillard’s pockets. Duke took twenty dollars from Gillard. Defendant searched Hodge’s pockets, although nothing was taken from him. The men continued to ask Gillard and Hodge for money while they were in the apartment. Additionally, a yellow portable Discman, a cell phone, and a cell phone charger were also taken from Gillard’s apartment.

Gillard had seen defendant on a prior occasion when defendant attempted to come to a party Gillard held. Gillard indicated that although the men were wearing a covering over their faces, he was still able to make an identification.

Terry Jablonski resided in an apartment across the hall from Gillard and Hodge, and heard a “big bang” and some “scuffling” coming from the apartment. Jablonski looked outside his apartment and saw an African-American male, described as a “big guy,” six feet in height and approximately two hundred pounds, standing by the door, holding it closed. Jablonski then heard more noises, and saw some people running down the stairs.

Subsequently, Trooper Joseph LaBelle utilized his tracking dog, which led LaBelle to a residence, later determined to be Jeremy Hoyt’s apartment. Trooper Mike Darrow knocked on the residence door, and Hoyt indicated that “Duke,” was present in the house, but that defendant was not present. Hoyt consented to a search of the home. Defendant was found in a bathroom of the residence. Seals was also found at the home, and was wearing bright red clothing. The police then found a Daisy BB-gun, similar to a “long-slank Glock,” under a mattress and a cell phone<sup>3</sup> under another mattress in the same room, along with a long kitchen knife on top of the television console. In the basement of the residence, the police located a kitchen knife, a black stocking cap, and marijuana.

After defendant was apprehended, he was interviewed by Trooper Mark Burch and Officer Dean Vosler. During the interview, defendant informed the officers that he and Ryan Gwizdala robbed Harry Lefkowitz’s house the previous week. Defendant indicated that he went to the Ninth Street apartment in an attempt to obtain money and drugs. Defendant claimed that he robbed the location on two prior occasions, but that the person he previously robbed was not present in the Ninth Street apartment on the day of the incident involved in this case. Defendant first stated that he had a small knife during the robbery, but later admitted that he had a BB-gun. Defendant also stated that Seals stole six dollars, a cell phone, and a CD player. Defendant indicated that he locked himself in the bathroom following the Ninth Street robbery after the

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<sup>2</sup> Hodge also testified that Duke was also known as Josh Seals.

<sup>3</sup> The owner of the cell phone was determined to be the son of Donald Edward, Sr., the landlord of the Ninth Street apartment, after Edward called the cell phone number and later identified the cell phone.

police dog came to the residence. Subsequently, defendant's fingerprint was found on the Daisy BB-gun.

## II. Other Acts Evidence

Defendant first argues that he was denied a fair trial based on the trial court's determination that defendant's admission, which contained information involving a separate robbery, was admissible at trial. We disagree.

The trial court initially addressed the prosecution's motion to present other acts evidence at defendant's first trial. After defense counsel indicated that he was proceeding on the defense of identity, the prosecutor argued that identity was not at issue since he admitted that he was involved in the robbery and because one of the victims recognized defendant during the course of the robbery, and that he intended to present the evidence in order to demonstrate a plan, scheme, or purpose. The trial court ruled that it would not permit the evidence to be presented at trial, but further held that the court's "ruling does not prevent statements of the defendant being introduced concerning not only the crime that he's alleged to have per – perpetrated here, but also the admission of any other crime that he may have had when being interviewed concerning this crime." Defense counsel objected to the admission of such evidence, arguing that defendant's admission to a separate crime was irrelevant. At the second trial, the court indicated that all of its prior rulings from the initial trial also pertained to the second trial, including the ruling involving the prosecution's MRE 404(b) motion. At trial, a recording containing statements made by defendant was played for the jury as evidence. Defendant's recorded confession revealed defendant's participation in this case along with his participation in another unrelated robbery.

We need not decide whether the other acts evidence was improperly admitted because the error, if any, was clearly harmless. In *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999), the Supreme Court held that a criminal conviction can be reversed because of preserved nonconstitutional error only if "after an examination of the entire cause it . . . affirmatively appear[s] that it is more probable than not that the error was outcome determinative." [Citation omitted.] Even without the challenged evidence, the evidence of defendant's guilt (e.g., the identification of defendant by each of the victims, defendant's confessions regarding his conduct in this case, evidence that a tracking dog led the police to defendant's location following the crime, the police finding items taken from the victim's home, and the corroborating fingerprint evidence) was overwhelming. Accordingly, we cannot conclude that, had the challenged evidence been excluded, it is more probable than not that defendant would have been acquitted.

## III. Witness John Capp

Next, defendant argues that he was denied his constitutional right to call a witness in his defense, John Capp. Defendant contends that Capp's testimony should not have been excluded on grounds of a discovery violation, nor should the testimony have been excluded for being a collateral issue. We disagree.

We review a trial court's decision regarding the admissibility of evidence for an abuse of discretion. *People v Washington*, 468 Mich 667, 670; 664 NW2d 203 (2003). Additionally, the

remedy for violation of a discovery order lies in the court's discretion. *People v Davie (After Remand)*, 225 Mich App 592, 597-598; 571 NW2d 229 (1997).

On the second day of trial, defense counsel brought a motion to permit Capp to testify on behalf of defendant. Defense counsel indicated that Capp would testify that he had been in the victims' apartment at the same time as defendant, and that they all used marijuana and had been drinking. Defense counsel suggested that the purpose of the testimony was to demonstrate bias and for impeachment purposes. The prosecutor contended that such evidence went to a collateral issue and that the evidence was irrelevant. The trial court held that the testimony would not be permitted at trial because there was a violation of the discovery rule<sup>4</sup> and Capp's testimony was offered for a collateral purpose that would serve to confuse the jury.

Rebuttal evidence must relate to a material rather than a collateral, irrelevant, or immaterial matter. *People v Vasher*, 449 Mich 494, 504; 537 NW2d 168 (1995); *People v Spanke*, 254 Mich App 642, 644-645; 658 NW2d 504 (2003). However, evidence revealing a witness' bias or prejudice is not collateral, *People v Rosen*, 136 Mich App 745, 758-759; 358 NW2d 584 (1984), and is "almost always relevant," *People v Layher*, 464 Mich 756, 762-765; 631 NW2d 281 (2001).

Defendant argues that Capp's testimony was relevant to demonstrate a "hidden" bias against defendant by Gillard and Hodge. Although defendant contends that the evidence that he smoked marijuana with Gillard and Hodge on a prior occasion would demonstrate bias against him, such bias is not apparent. The allegation does not relate to the victims' specific identification of defendant. Additionally, it was within the trial court's discretion to exclude the witness' testimony if it violated the court's discovery order. Finally, given the overwhelming evidence supporting defendant's conviction, we cannot conclude that it is more probable than not that defendant would have been acquitted had the testimony been permitted. *Lukity, supra*.

#### IV. Offense Variable (OV) 14

Finally, defendant argues that the trial court erred in scoring OV 14 at ten points. Specifically, defendant contends that there is no evidence to support the trial court's conclusion that defendant was a leader in a multiple offender situation. We disagree.

In response to defendant's objection regarding the scoring of OV 14, the prosecutor stated:

I don't have any objection to the scoring of the guidelines. I would object to the Court deleting 10 points under Offense Variable Number 14, however.

And my recollection of the testimony of the trial and the defendant's own statement given to the detectives in the case clearly indicates that he was the leader in a multiple offender situation.

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<sup>4</sup> The discovery order was not located in the lower court record.

He admittedly had gone to that residence on several other occasions, one time with a knife, and had robbed those people, and I believe that based on all the evidence that I heard during the course of the trial, this defendant clearly was the leader.

Following the prosecutor's argument, the trial court agreed with the prosecutor that defendant was a leader, and determined that OV 14 was properly assigned ten points.

"A sentencing court has discretion in determining the number of points to be scored, provided that evidence of record adequately supports a particular score." *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). Further, "[s]coring decisions for which there is any evidence in support will be upheld." *Id.*

According to MCL 777.44, ten points should be assigned to OV 14 if "[t]he offender was a leader in a multiple offender situation." The statute further instructs that "[t]he entire criminal transaction should be considered when scoring this variable." MCL 777.44(2)(a). Here, the trial court, in agreement with the prosecutor, determined that defendant's involvement in the crime as a leader in a multiple offender situation was supported by the evidence that defendant had robbed the victims' apartment on two prior occasions. Defendant's involvement as a leader may be inferred from such conduct. As there was evidence supporting this inference, the trial court's decision to score OV 14 at ten points must be upheld.

Affirmed.

/s/ Peter D. O'Connell  
/s/ Kurtis T. Wilder  
/s/ Christopher M. Murray