

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RALPH DAVID CROTHERS,

Defendant-Appellant.

UNPUBLISHED

March 13, 2008

No. 276400

Oakland Circuit Court

LC No. 2006-207378-FC

Before: O’Connell, P.J., and Borrello and Gleicher, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial conviction of carjacking, MCL 750.529a. The trial court sentenced him as a second habitual offender, MCL 769.10, to 42 to 87 months’ imprisonment. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

At approximately 6:00 p.m. on February 5, 2006, the day that Detroit hosted the Superbowl, Walter Terry stopped at a self-service car wash in Auburn Hills to wash his car before going to a relative’s house to watch the game. As he was washing his car, two young men identified as defendant and codefendant Jeffrey Grabski approached him. Defendant asked Terry for money, claiming that his car had run out of gas. Terry gave him a few dollars and some change, and the men left. Shortly thereafter, they returned with another individual, Aaron Hauer, and defendant yelled, “We need your car mother f--ker.” He then got into the passenger side of the vehicle and yelled to the others, “Come on, get in the car, let’s go.” The car had been running while Terry was washing it, and Grabski and Hauer got into the car and drove away. Because the vehicle was equipped with an OnStar unit, police officers were able to locate the car parked in front of a residence in Detroit. Officers apprehended defendant and Grabski inside the residence. Defendant gave a statement to the police admitting that he, Grabski, and Hauer took Terry’s car into Detroit to purchase drugs. Grabski gave a similar statement to the police that was admitted at trial.

Defendant argues that the admission of Grabski’s statement to the police at their joint trial violated his Sixth Amendment right to confront the witnesses against him. We disagree. We review a trial court’s decision regarding the admission of evidence for an abuse of discretion, but we review de novo a trial court’s decision on a preliminary question of law. *People v Lukity*, 460 Mich 484, 488; 596 NW2d 607 (1999). We likewise review de novo constitutional

questions regarding a defendant's right of confrontation. *People v Beasley*, 239 Mich App 548, 557; 609 NW2d 581 (2000).

Both the Michigan and United States Constitutions guarantee a criminal defendant the right to confront the witnesses against him. US Const, Am VI; Const 1963, art 1, § 20; *Crawford v Washington*, 541 US 36, 42; 124 S Ct 1354; 158 L Ed 2d 177 (2004). Relying on *Bruton v United States*, 391 US 123, 126; 88 S Ct 1620; 20 L Ed 2d 476 (1968), our Supreme Court has recognized that "a defendant is deprived of his Sixth Amendment right to confront witnesses against him when his nontestifying codefendant's statements implicating the defendant are introduced at their joint trial." *People v Pipes*, 475 Mich 267, 275; 715 NW2d 290 (2006). Further, this error is not cured by a limiting instruction directing the jury to consider the statement's implications against the declarant and not the codefendant, because "'the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored.'" *Id.*, quoting *Bruton*, *supra* at 135. In *Cruz v New York*, 481 US 186, 193; 107 S Ct 1714; 95 L Ed 2d 162 (1987), the United States Supreme Court upheld the rule when, as here, a defendant also confesses, but it also held that the defendant's confession "may be considered on appeal in assessing whether any Confrontation Clause violation was harmless" *Id.* at 194; see also *Pipes*, *supra* at 276-277.

In accordance with the above precedent, defendant was denied his right to confront the non-testifying codefendant Grabski, when Grabski's testimonial confession was admitted at trial without ever being subject to cross-examination. *Cruz*, *supra* at 193; *Bruton*, *supra* at 126. However, the admission of Grabski's statement was nonstructural error that was harmless beyond a reasonable doubt. *Pipes*, *supra* at 276-277 n 31; *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

Terry identified defendant as one of the men who approached him, asked for gas money, and then returned to take his vehicle. Defendant gave a detailed confession to police, admitting that he, Hauer, and Grabski had been using drugs for several days and that he participated in the carjacking to obtain more drugs. He did not shift any blame away from himself or assume full responsibility, stating instead that all three individuals concocted and carried out the plan together. In contrast, Grabski told police that he, rather than defendant, was the person who asked Terry for gas money and who "got in [Terry's] face" and told him that they were taking his car. Therefore, Grabski's statement to police conflicted with Terry's testimony that defendant was the principal actor, which tended to exonerate defendant. Moreover, contrary to defendant's arguments, Grabski's statements tended to corroborate defendant's claim that he was a mere bystander and not an active participant in the crime. In light of the testimony presented and defendant's detailed confession of his involvement in the carjacking, the erroneous admission of Grabski's self-implicating statement to police was harmless beyond a reasonable doubt. *Carines*, *supra* at 774.

Affirmed.

/s/ Peter D. O'Connell
/s/ Stephen L. Borrello
/s/ Elizabeth L. Gleicher