

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROOSEVELT THEODORE WATTS, JR.,

Defendant-Appellant.

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UNPUBLISHED

March 25, 2008

No. 272369

Wayne Circuit Court

LC No. 06-004272-01

Before: Schuette, P.J., and Borrello and Gleicher, JJ.

SCHUETTE, P.J. (*dissenting*).

I respectfully dissent from the majority opinion of my very distinguished colleagues, Judges Borrello and Gleicher. While I agree that the trial court erred in not making a determination on the record as to whether defendant's prior conviction had significant probative value on the issue of his credibility and whether its probative value outweighed its prejudicial effect, I believe the error was harmless. Therefore, I would affirm defendant's convictions.

At trial, defendant stipulated to a conviction for a prior felony but did not specify the charge, which was armed robbery. During cross-examination of defendant, however, the prosecution asked on three separate occasions whether defendant had been convicted of armed robbery. The defense objected after the first mention of the felony. Both parties approached the bench and went off the record. After going back on the record, the prosecution mentioned the armed robbery conviction twice more, with no further objections by defendant.

There is no indication on the record as to the judge's reasoning for allowing in the evidence of the prior conviction for armed robbery. Under MRE 609, the trial court may allow the use of prior theft convictions to impeach the credibility of a defendant in a criminal trial, provided that the court makes a determination on the record that the evidence has significant probative value on the issue of credibility and that the probative value of the evidence outweighs the prejudicial effect. MRE 609(a)(2). The trial court presumably found that the probative value of the evidence outweighed the prejudicial effect on the jury, but it failed to state any findings or articulate its determination on the record. In doing so, the trial court erred. *People v McDaniel*, 256 Mich App 165, 168; 662 NW2d 101 (2003).

However, as stated by the majority, this error is subject to a harmless error analysis. "Whether a preserved nonconstitutional error is harmless depends on the nature of the error and its effect on the reliability of the verdict in light of the weight of the untainted evidence." *Id.* A

preserved, nonconstitutional error “is not a ground for reversal unless ‘after an examination of the entire cause, it shall affirmatively appear’ that it is more probable than not that the error was outcome determinative.” *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999).

Here, I believe the trial court’s error was harmless because there was sufficient evidence in this case to establish defendant’s guilt independent of the trial court’s error. Therefore, the error was not outcome determinative.

Defendant’s testimony lacked credibility regardless of the trial court’s admission of his prior armed robbery conviction. He testified that a masked gunman entered the house and shot the victim while standing only a foot or so from defendant, as a way of explaining the gunshot residue on his hands, face, and clothing. Defendant then says that he fled the scene. Yet none of the prosecution witnesses testified to seeing or witnessing any evidence of a mysterious, anonymous gunman. Rather, all testified that defendant was the only other person present in the house at the time of the shooting. Lundy testified that he saw defendant with a gun in his possession right before the shooting. Turner testified that she saw defendant immediately after the shooting, contradicting defendant’s statement that he fled the scene immediately after the masked gunman opened fire. Further, when taken into custody, defendant had \$40 and drugs identical to those sold by the victim in his possession; the victim had no money or drugs on him when he arrived at the hospital. Defendant claims that he was saving the \$40 for his wife, but it seems hard to believe that a person with a crack cocaine habit and cash to spend would choose to “save” any money after smoking drugs that very evening and conceding that he wanted more drugs from the victim.

Accordingly, because I believe the trial court’s error was harmless, I would affirm defendant’s convictions.

/s/ Bill Schuette