

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,  
  
Plaintiff-Appellee,

v

LARRY LEE MCALLISTER,

Defendant-Appellant.

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FOR PUBLICATION  
December 21, 2001  
9:05 a.m.

No. 212690  
Wayne Circuit Court  
LC No. 97-005169

ON REMAND  
Updated Copy  
March 15, 2002

Before: Hood, P.J., and Gage and Whitbeck, JJ.

PER CURIAM.

This case is before us on remand from the Supreme Court. On original submission, we concluded that the introduction of information regarding an anonymous telephone call was erroneous, but was not outcome determinative, citing *People v Lukity*, 460 Mich 484, 496; 596 NW2d 607 (1999). *People v McAllister*, 241 Mich App 466, 469-471; 616 NW2d 203 (2000). On remand, the Supreme Court has directed us to address defendant's claim under the standard for unpreserved constitutional error set forth in *People v Carines*, 460 Mich 750; 597 NW2d 130 (1999).<sup>1</sup> We continue to affirm.

To avoid forfeiture of a constitutional claim, the defendant must show that an error occurred, it was plain, and it affected the outcome of the lower court proceedings. *Carines*, *supra* at 763. In the present case, defendant has failed to meet this burden. Three witnesses were able to identify defendant as the assailant, and a waitress at the bar placed defendant at the scene. *McAllister*, *supra* at 470-471. Defendant was not denied his right of confrontation when he was able to challenge the identification by these witnesses in light of visibility conditions and the duration of the attack on the victim. The trial court also provided a cautionary instruction

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<sup>1</sup> *People v McAllister*, 465 Mich 884 (2001).

regarding the limited purpose of the information and that it was not admitted for the truth of the matter asserted.<sup>2</sup>

Affirmed.

/s/ Harold Hood  
/s/ Hilda R. Gage  
/s/ William C. Whitbeck

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<sup>2</sup> We note that following the completion of the next witness and after the jury was excused, the trial court acknowledged that the anonymous tip issue had been raised by defense counsel at a sidebar. The substance of the sidebar and ruling were then placed on the record. Specifically, defense counsel objected to the context of the conversation, and the trial court allowed "it" with a curative instruction. Analysis of preserved constitutional error that is not the result of a structural defect is reviewed for harmless error. *People v Anderson (After Remand)*, 446 Mich 392, 405-406; 521 NW2d 538 (1994); *Carines, supra* at 774. This error does not constitute a structural defect, *Anderson, supra* at 405, and this error, quantitatively assessed in the context of other evidence presented at trial, was harmless beyond a reasonable doubt. *Id.* at 405-406.