

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROY BLACKMON,

Defendant-Appellant.

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FOR PUBLICATION

August 19, 2008

9:10 a.m.

No. 277184

Wayne Circuit Court

LC No. 98-005154

Advance Sheets Version

Before: Markey, P.J., and White and Wilder, JJ.

WHITE, J. (*concurring*).

I agree with Judge Wilder’s legal conclusion that where the violation of a specific constitutional right is not at issue, the standard for determining whether there has been error of a constitutional magnitude in violation of the Due Process Clause is as stated in *Donnelly v DeChristoforo*, 416 US 637, 643; 94 S Ct 1868; 40 L Ed 2d 431 (1974), and *Darden v Wainwright*, 477 US 168; 106 S Ct 2464; 91 L Ed 2d 144 (1986)—“whether the error so infected the trial with unfairness as to make the resulting conviction a denial of due process.”

A panel of this Court previously found both trial-court error in the admission of evidence and prosecutorial misconduct, but found that because the error did not undermine the reliability of the verdict, the error were harmless. This is a somewhat different inquiry from the question whether the error so infected the trial with unfairness as to make the resulting conviction a denial of due process.

Having read the transcript, I conclude that the error did not so infect the trial with unfairness as to make the resulting conviction a denial of due process. The trial was focused on the question whether defendant was guilty of the charged offenses, based on assessment of the credibility of the various witnesses. While the gang evidence was erroneously injected into the trial, my reading of the transcript leads me to conclude that the injection of this issue into the trial did not result in the jury’s attention being redirected away from the essential question of guilt based on the evidence to the question of guilt based on association, character, or other extraneous or prejudicial factor. Having so concluded, I agree that the trial was not so unfair as to render the conviction a denial of due process and, thus, the error was not of constitutional magnitude.

/s/ Helene N. White