

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

BRYAN FRANCIS RUSSELL,

Defendant-Appellant.

UNPUBLISHED

November 9, 1999

No. 209466

St. Clair Circuit Court

LC No. 97-002026 FH

Before: White, P.J., and Hood and Jansen, JJ.

WHITE, J. (concurring).

I conclude that the circumstances of Troy's second statement rendered it inadmissible under *People v Spinks*, 206 Mich App 488, 522 NW2d 875 (1994) and *People v Richardson*, 204 Mich 71, 514 NW2d 503 (1994). Nevertheless, I conclude that the error was harmless. Troy's statement was admissible to the extent it incriminated him. MCR 804(b)(3). What is at issue is the portion of the statement incriminating defendant. I conclude that the jury would have reached the same result even if defendant's brothers' statements had been redacted.

Police witnesses testified that defendant made inculpatory statements to police admitting his participation in the plan. These statements were consistent with Troy's statement. At trial, defendant denied making the statements as reported by the police. Defendant's trial testimony largely admitted Troy's account of the group's movements and actions that night, but disputed that defendant had knowledge of Troy's and Johnson's intent, and that the group returned to the house to secure the needed tools. I conclude that the consistency between Troy's statement if properly redacted and defendant's alleged statement to police would have persuaded the jury that defendant had in fact told police what they claimed he told them, and that the statement was accurate.

/s/ Helene N. White