

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

V

JOSEPH KENNETH MANNI,

Defendant-Appellant.

UNPUBLISHED
November 1, 2011

No. 298050
Ogemaw Circuit Court
LC No. 09-003343-FH

Before: STEPHENS, P.J., and SAWYER and K. F. KELLY, JJ.

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

I respectfully disagree with the well written majority opinion because the trial court erred in admitting the letter from “Joe” and the error was not harmless. As a result, I would reverse and remand for a new trial.

To be admissible, evidence must be authenticated. That requirement “is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.” MRE 901(a). MRE 901 provides a non-exhaustive list of examples illustrating some of the ways authentication can be achieved. MRE 901(b). Specifically, the authentication requirement can be met through “*Distinctive Characteristics and the Like*. Appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.” MRE 901(b)(4).

The trial court found that the letter in the present case was authenticated based on the contents referring to the money and amount stolen from Kennedy and the signature by “Joe,” in conjunction with the circumstances and testimony from Kennedy that defendant was the only Joe at her house the day her money was stolen. Additionally, the court determined that Kennedy was a credible witness and found that the events in question happened as she testified.

MRE 901(b) reflects that there are numerous ways for a document to be authenticated. In this case the court found that the very contents of the letter provided authentication. The author of the letter noted exposure to a term of life if convicted. That fact is unique to a person with defendant’s status of fourth habitual offender. The letter purports to be from “Joe” which is a variation of defendant’s first name. That name is common and popular. The letter stated that the author was accused of the home invasion. This fact was known by many people. The letter

indicated that the author had recently suffered a death within his intimate circle. The record is devoid of any evidence that this defendant suffered such a loss. The letter asserts that its origin was the Clare county jail and the record has no proof that this defendant was ever housed in Clare. A \$100 money order was enclosed in the letter while the money stolen from the complainant was amounted to \$87. The letter's author claimed several visits to the complainants' home while the complainant recalls that the defendant had only been at her home once to do a roof repair.

This letter is strikingly similar to the telegraph in *People v Thompson*, 111 Mich App 324; 314 NW2d 606 (1981). That telegraph was sent to an assault victim in the hospital and threatened her with further violence. The letter was signed with the name of the defendant and included the phone number of the defendant's mother. The trial court held that the letter was admissible. Upon review, This Court held that the trial court abused its discretion because the letter was not properly authenticated. *Id.* at 328. . Similarly, it was an abuse of discretion for the trial court to admit this letter. The letter in this case was handwritten and contained references to several facts that, if confirmed, may have demonstrated that it was authentic. However, because those aspects of the letter were not verified, we cannot say that the admission of the letter was within the principled range of outcomes.

The majority found that any error in admission of the letter is harmless. I disagree with that conclusion and find that it is not supported by the record. As the majority correctly states, defendant bears the burden to establish that the error affected the outcome of the trial. The majority cites the trial court's extensive fact finding in this case. While it is true that several pages of transcript are devoted to the trial court's findings, I disagree that the trial court's commentary demonstrates that the letter was not the most significant factor when reaching its verdict. The trial court described the testimony of the complainant and concluded that he found that testimony to be credible. According to the trial court, the testimony demonstrated that the complainant observed defendant outside of her home. Shortly thereafter, she heard a "cracking" noise. She then observed that the act door was damaged and the money that was on a nearby table was gone. Additionally, she noticed the scent of cologne. The complainant could not testify that she observed defendant actually steal the money. After describing those facts, the trial court stated:

But in my opinion, what is most supportive of this is, I did look at the letter.....Here is what I looked at, though. And when you sort of fly speck this thing, "I had my mother send you your missing money." How did he know the money was missing? Well, he is being charged with it. But more to the point, he took it. So he sends the missing money.

The mere fact that the trial court devoted relatively little time addressing the letter in question is not dispositive of the harmless error analysis. The trial court's own words explicitly demonstrate that the letter was the most important factor in the court's finding that the defendant was the perpetrator of the crime. The trial court would have been permitted to convict defendant had it done so only on the basis of the complainant's testimony.

However, because it appears that the conviction was premised on the improperly admitted letter, I find that it is more probable than not that the error was outcome determinative. I would reverse and remand for a new trial.

/s/ Cynthia Diane Stephens