

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

UNPUBLISHED

Plaintiff-Appellee,

v

No. 175929

LC No. 92-007312-01

LAMONT ROBINSON,

Defendant-Appellant.

Before: Wahls, P.J., and Murphy and C.D. Corwin,* JJ.

WAHLS, J. (Dissenting)

I respectfully dissent. I would hold that the trial court's error in restricting defense counsel's cross-examination of prosecution witnesses was not harmless beyond a reasonable doubt.

Cross-examination is arguably the most effective, and sometimes the only, tool a defendant has to defend against the charges brought against him. *People v Mumford*, 183 Mich App 149, 153; 455 NW2d 51 (1990). Cross-examination is so critical to a defendant's defense that it is considered the primary interest secured by the confrontation clause. *Id.* A limitation on cross-examination which prevents a defendant from placing before the jury facts from which bias, prejudice or lack of credibility of a prosecution witness might be inferred constitutes denial of the constitutional right of confrontation. *People v Cunningham*, 215 Mich App 652, 657; 546 NW2d 715 (1996); *Mumford, supra*, p 153. Here, the trial court's finding that Herrera was at the polygraph examination for security purposes only invaded the province of the jury and violated defendant's right to confront the witnesses against him. See *People v Poole*, 444 Mich 151, 160; 506 NW2d 505 (1993).

An error which occurs during the presentation of the case to the jury is assessed in the context of other evidence presented in order to determine whether its admission was harmless beyond a reasonable doubt. *People v Anderson (After Remand)*, 446 Mich 392, 405-406; 521 NW2d 538 (1994). This requires the beneficiary of the error to prove, and the court to determine, beyond a

* Circuit judge, sitting on the Court of Appeals by assignment.

reasonable doubt that there is no reasonable possibility that the evidence complained of might have contributed to the conviction. *Id.*, p 406.

In *People v Monet*, 90 Mich App 553, 556; 282 NW2d 391 (1979), the defendant had made incriminating statements during a polygraph examination. At trial, the defense strategy was to create reasonable doubt as to those statements by alleging coercion. *Id.* However, the trial court forbid inquiry by defense counsel into coercion of the defendant by the polygraph examiner during the time they were alone together. *Id.*, p 557. This Court held that the trial court's ruling impermissibly prevented defendant from presenting his theory of the case, and constituted error requiring reversal. *Id.*, p 559. Similarly, in *People v Jensen*, 162 Mich App 171, 181; 412 NW2d 681 (1987), this Court found that reversal was required where the trial court's limitation on cross-examination prevented inquiry into a crucial element of the defense theory. See also *People v Martin*, 100 Mich App 447, 449; 298 NW2d 900 (1980).

Here, as in *Monet*, the trial court's restriction of defendant's cross-examination effectively denied defendant the right to confront a prosecution witness. Defendant's confession was one of, if not *the* most crucial piece of evidence which the prosecution presented. In his confession, defendant stated, "I killed Lorenzo because I didn't know how to care for the kid. Lorenzo would still be alive if someone else had been watching him." In light of the importance of defendant's confession to the prosecution's case, I believe that there is a reasonable possibility that the trial court's erroneous ruling might have contributed to defendant's conviction. *Anderson, supra*, p 406. Accordingly, I would remand for a new trial.

/s/ Myron H. Wahls