

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES ANTHONY FORESI,

Defendant-Appellant.

UNPUBLISHED

April 25, 1997

No. 178589

Macomb Circuit Court

LC No. 93-002148

Before: Young, P.J., and Taylor and R.C. Livo,* JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to do great bodily harm, 750.84; MSA 28.279, and was sentenced to six to ten years of imprisonment. He now appeals as of right. We reverse and remand for a new trial.

Bobby Tate was found by a Warren police officer lying on his back near his trailer with a severe stab wound to his chest. Tate testified that defendant visited his trailer at approximately 12:20 a.m. and then left after Tate declined his invitation to go out “partying.” Defendant returned at approximately 1:00 a.m. and used Tate’s bathroom. Defendant asked Tate to assist him while in Tate’s restroom and proceeded to stab Tate.

Defendant presented a different version of events. Defendant claimed that Tate drove by his house that evening and indicated that he wished to speak with him. Defendant entered Tate’s car, and they drove to Tate’s trailer. Defendant stated that Tate asked him about a guitar and then accused defendant of being a snitch. According to defendant, Tate ambushed him outside of Tate’s trailer bathroom. According to defendant, the men struggled and, as defendant pushed Tate off him, “the knife went into Mr. Tate.”

Defendant first argues that the trial court abused its discretion in refusing to admit evidence of Tate’s motive or bias. We agree. Defendant asserts that he was precluded from presenting evidence

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

surrounding a stolen guitar, that, had such evidence been admitted, it would have illustrated Tate's animus toward defendant. Defendant sought to introduce evidence that approximately three weeks before the altercation, Tate allegedly sold a stolen guitar to defendant's mother. According to defendant, Tate informed him that he was not going to go to jail because of defendant being a "snitch" and a "narc." Defense counsel argued that defendant's reputation as a police informant and Tate's statements concerning the guitar were very material and relevant to the case. Although the trial court did not completely prevent defendant from exploring the issue of the stolen guitar, the court limited defense counsel's pursuit of this subject to such a degree so as to, in effect, prevent any meaningful exploration of this matter. The trial court ultimately ruled that the evidence would not be admitted so long as the court deemed it collateral.

We review a trial court's evidentiary ruling to determine whether it constituted an abuse of discretion. *People v Bahoda*, 448 Mich 261, 289; 531 NW2d 659 (1995). Additionally, the scope of cross-examination to demonstrate bias will not be deemed error absent a clear showing of an abuse of discretion. *People v Carner*, 117 Mich App 560, 569; 324 NW2d 78 (1982).

As a general rule, a witness may not be contradicted regarding collateral, irrelevant, or immaterial matters. *People v Vasher*, 449 Mich 494, 504; 537 NW2d 168 (1995). However, this Court has noted that "as a general principle, a witness's bias or prejudice may be shown by extrinsic evidence, since 'particular conduct and circumstances form the only means practically available for effectively demonstrating the existence of bias.'" *People v Perkins*, 116 Mich App 624, 628; 323 NW2d 311 (1982), quoting 3A Wigmore, Evidence (Chadbourn Rev), § 948, p 784; See also *People v Rosen*, 136 Mich App 745, 759; 358 NW2d 584 (1984). No conflict arises between this rule and MRE 608(b).¹ *Id.*

The trial court's ruling excluding testimony regarding the significance of the guitar was material to the defense, and as a result, constituted an abuse of discretion. Defendant's culpability boiled down to crediting either his version of events or Tate's. Tate's motive in testifying was significant with respect to defendant's theory of self-defense. The defense maintained that Tate lured defendant to his trailer that evening and assaulted him apparently in response to Tate's belief that defendant would report him to the police for allegedly selling a stolen guitar to defendant's mother.

The claim that the denial of cross-examination has prevented the exploration of a witness' bias is subject to harmless error analysis. See *People v Minor*, 213 Mich App 682, 685; 541 NW2d 576 (1995). The first of two inquiries pertinent to whether an error is harmless is to determine whether the error is so offensive to the maintenance of a sound judicial process that it can never be regarded as harmless. *Id.* at 687. The second inquiry is whether this Court can declare a belief that the error was harmless beyond a reasonable doubt. *People v Robinson*, 386 Mich 551, 563; 194 NW2d 709 (1972).

We cannot confidently conclude that the exclusion of the evidence was merely harmless and did not affect the verdict. *People v Adamski*, 198 Mich App 133, 140; 497 NW2d 546 (1993). Although the defense was able to introduce defendant's reputation as a police informant, it was not able

to fully explore the fact that defendant and Tate allegedly met three days before the altercation to discuss the guitar and related issues. Moreover, defendant's theory becomes more plausible given Tate's alleged action relative to the guitar issue and defendant's alleged reputation as a "narc." Assuming Tate believed defendant was an informant, under this theory, defendant's inclination to report Tate would increase significantly and heighten his anger against defendant. Curtailing defendant's testimony and excluding Detective Scott's testimony surrounding the stolen guitar diluted the defense. Because the issue concerns defendant's claim of self-defense, we believe the trial court's decision to exclude this testimony as collateral could have affected the outcome of the trial. Therefore, defendant's conviction is reversed and the case remanded for a new trial. *People v George*, 213 Mich App 632, 635; 540 NW2d 487 (1995).

At retrial, we instruct the court not to allow Detective Randy Constanzo, the officer in charge, to testify that he thought defendant was "probably guilty" when he failed to appear at a scheduled appointment constituted error requiring reversal.

Reversed and remanded for a new trial. We do not retain jurisdiction.

/s/ Robert P. Young, Jr.

/s/ Clifford W. Taylor

/s/ Robert C. Livo

¹ MRE 608(b) provides that:

Specific instances of conduct of a witness, for the purpose of attacking or supporting his credibility, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross-examination of the witness (1) concerning his character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness to which character the witness being cross-examined has testified.

See also *People v Flaherty*, 165 Mich App 113, 122; 418 NW2d 695 (1987).