

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHERYL LYNN GURLEY,

Defendant-Appellant.

UNPUBLISHED

June 24, 1997

No. 192049

Oakland Circuit Court

LC No. 95-138409 FH

Before: Holbrook, Jr., P.J., and MacKenzie and Murphy, JJ.

PER CURIAM.

Following a bench trial, defendant was convicted of larceny from the person, MCL 750.357; MSA 28.589. Defendant was sentenced to 365 days in jail, ordered to pay \$1,500 restitution, and to pay \$40 to the crime victims' fund. Defendant now appeals as of right. We affirm.

First, defendant argues that the evidence presented at trial was insufficient to support a guilty verdict. We disagree. When reviewing a claim of insufficient evidence following a bench trial, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found that the essential elements of the crime were proven beyond a reasonable doubt. *People v Hutner*, 209 Mich App 280, 282; 530 NW2d 174 (1995). The prosecutor need not negate every reasonable theory of innocence, but must prove his own theory beyond a reasonable doubt in the face of whatever contradictory evidence the defendant provides. *People v Quinn*, 219 Mich App 571, 574; 557 NW2d 151(1996). Larceny is a specific intent crime. *People v Ainsworth*, 197 Mich App 321, 324; 495 NW2d 177 (1993). The elements of larceny are: (1) an actual or constructive taking of goods or property, (2) a carrying away or asportation, (3) the carrying away must be with felonious intent, (4) the subject matter must be the goods or personal property of another, (5) and the taking must be without the consent of and against the will of the owner. *Id.*

The evidence presented at trial demonstrated that defendant worked at the nursing home where Agnes MacIver resided when her engagement ring disappeared one night. MacIver had never taken the ring off in nearly 70 years. MacIver's daughter last saw the ring on her mother's finger on a Friday

evening. When she next visited her mother the following Monday morning, the ring was gone. Defendant testified that she worked from 3:00 p.m. to 11:30 p.m. during that weekend. MacIver had stated that people in her room took the ring off of her finger at 4:00 a.m. Defendant admitted that she had access to MacIver's room. Rudy Bragg, a former co-worker and acquaintance of defendant, testified that defendant had told her on at least two occasions that she had taken MacIver's ring. Defendant testified that Bragg was lying because Bragg wanted reward money offered for the ring and because she refused Bragg's request to move in with her.

Specifically, defendant argues that MacIver's testimony that she was robbed at 4:00 a.m. in light of the fact that defendant worked only until 11:30 p.m. during the weekend in question, establishes a reasonable doubt that she was guilty of stealing the ring. We find that there was sufficient evidence to support defendant's guilty verdict. Defendant was working evenings in the nursing home during the weekend when MacIver's ring was taken from her. It was possible defendant remained at the nursing home past her work period, or that the ring was actually taken earlier, while defendant was working. Defendant had access to MacIver's room. Defendant admitted to Bragg that she took the ring not once, but twice. Viewed in a light most favorable to the prosecution, these facts are sufficient from which a reasonable trier of fact could find that defendant was guilty beyond a reasonable doubt.

Defendant next argues she was denied a fair trial because she was not allowed to confront and test the credibility of Bragg, the prosecution's primary witness, as to her statements to Sergeant W. J. Gregory of the West Bloomfield Township Police Department. We again disagree.

Defense counsel attempted to impeach Bragg through the testimony of Gregory. The credibility of a witness may be attacked by any party. MRE 607; *People v Jenkins*, 450 Mich 249; 537 NW2d 828 (1995). In attempting to impeach Bragg, defense counsel asked Gregory about (1) his prior conversations with Bragg, and (2) Bragg's prior conversations with defendant. The trial court ruled that both of these subjects were hearsay. Hearsay is a statement, other than one made by the declarant while testifying at trial or hearing, offered to prove the truth of the matter asserted. MRE 801(c); *People v Fisher*, 220 Mich App 133, 152; 559 NW2d 318 (1996).

In this case, even assuming the trial court had committed error in denying Gregory's testimony, any error was harmless and would not have resulted in prejudice to defendant. A limitation on cross-examination preventing 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). Violations of the right to adequate cross-examination are subject to harmless-error analysis. *Id.* Harmless-error analysis, when constitutional issues are involved, calls for a two-step inquiry. *People v Mack*, 218 Mich App 359, 364; 554 NW2d 324 (1996). First, this Court must determine whether the error is harmless beyond a reasonable doubt. *Id.* This test is met if the error had no effect on the verdict. *Id.* Second, this Court must determine whether the error was so offensive to the maintenance of a sound judicial system that it can never be regarded as harmless. *Id.* This standard is met when the error was deliberately injected by the prosecutor, if it deprived defendant of a fundamental element of the adversarial process, or if it was particularly persuasive or inflammatory. *Id.*

If there was any such error, it was not so offensive to the maintenance of our judicial system that it could never be regarded as harmless. Defendant sought to attack Bragg's credibility as a witness. In fact, defendant was able to confront Bragg and significantly attack her credibility, including asking Bragg about statements she made to Gregory. Defendant clearly established that Bragg had lied to the police during their investigation and had a motivation to accuse defendant of stealing the ring. Accordingly, defendant was not denied her constitutional right to confront the witnesses against her.

Affirmed.

/s/ Donald E. Holbrook, Jr.

/s/ Barbara B. MacKenzie

/s/ William B. Murphy