

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERIC LAWSON,

Defendant-Appellant.

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UNPUBLISHED

January 17, 2006

No. 251331

Wayne Circuit Court

LC No. 01-000516-02

ON REMAND

Before: Murray, P.J., and Meter and Owens, JJ.

PER CURIAM.

Defendant appealed as of right to this Court from his conviction by a jury of first-degree premeditated murder, MCL 750.316. We affirmed his conviction. *People v Lawson*, unpublished opinion per curiam of the Court of Appeals, issued February 15, 2005 (Docket No. 251331) (*Lawson I*). Subsequently, defendant filed an application for leave to appeal in the Supreme Court, and that Court, in lieu of granting leave to appeal, vacated our opinion in part and remanded the case to us to

consider whether the constitutional error in this case was harmless beyond a reasonable doubt. The Court of Appeals shall make its determination in a manner consistent with the process of assessment described in *People v Shepherd*, 472 Mich 343, 347-348[; 697 NW2d 144] (2005), and *People v Mateo*, 453 Mich 203, 215[; 551 NW2d 891] (1996). In all other respects the application is DENIED. [*People v Lawson*, 474 Mich 887, 887; 705 NW2d 29 (2005) (*Lawson II*).]

We once again affirm defendant's conviction.

In *Lawson I*, we concluded that a constitutional error occurred when the custodial statements of defendant's nontestifying codefendant were admitted at defendant's trial. *Lawson I, supra*, slip op at 1-2. We held, however, that the error was harmless beyond a reasonable doubt. *Id.* at 2. We stated:

Recently, in *Crawford v Washington*, 541 US 36; 124 S Ct 1354, 1374; 158 L Ed 2d 177 (2004), the United States Supreme Court held that testimonial out-of-court statements may not be admitted against a criminal defendant unless the declarant is unavailable and there has been a prior opportunity for the cross-examination of the declarant. See also *People v McPherson*, 263 Mich App 124,

132; 687 NW2d 370 (2004). While the Crawford Court “[left] for another day any effort to spell out a comprehensive definition of ‘testimonial,’ *Crawford, supra*, 124 S Ct at 1374, it also stated that “[s]tatements taken by police officers in the course of interrogations are . . . testimonial under even a narrow standard.” *Id.* at 1364.

In the instant case, while in custody, the codefendant voluntarily made statements to the police. The codefendant stated that he paid defendant \$250 to kill the victim, Eleanor Jones, and that, on the day of incident, defendant killed Jones in her house. The codefendant's police statements regarding the murder were read into the record at trial. Given that the codefendant's statements inculcating defendant were testimonial in nature and that the codefendant did not testify at trial, the use of the codefendant's statements violated defendant's constitutional rights and constitutes error. *Crawford, supra*, 124 S Ct at 1374.

A denial of the constitutional right of confrontation is subject to harmless-error analysis. *People v Kelly*, 231 Mich App 627, 644; 588 NW2d 480 (1998); *McPherson, supra* . . . at 131. In reviewing a claim of preserved constitutional error, the beneficiary of the error, the prosecution herein, must prove that it is harmless beyond a reasonable doubt. *People v Reese*, 242 Mich App 626, 635; 619 NW2d 708 (2000); *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

We conclude the admission of the codefendant's statements was harmless beyond a reasonable doubt. The evidence shows that defendant admitted to having committed the murder to two other inmates on separate occasions. Eric Davis, who was detained next to defendant's jail cell, testified that defendant asked him to make a telephone call to defendant's cousin, Larry Wilson, and convey defendant's message to “get rid of the gun.” After the phone call, defendant told Davis that his “home boy,” whom he specifically referred to as the codefendant, had paid him \$250 to kill Jones. Another inmate, Tyrone Sanford, also testified that defendant told him that he was in jail for killing the codefendant's mother and that the codefendant hired him to kill his mother for \$250. Defendant further told Sanford in detail about how the murder occurred, including how defendant went into Jones’[s] house and shot Jones in the back of the head. In light of the overwhelming evidence against defendant, the admission of the codefendant's statements could not have prejudiced defendant. The trial court did not abuse its discretion in denying defendant's motion for a new trial. [*Lawson I, supra*, slip op at 1-2.]

At noted, the Supreme Court has asked that we review the harmless-error issue using the standards set forth in *Shepherd* and *Mateo*. We note that *Mateo* involved a preserved, nonconstitutional error as opposed to a preserved, constitutional error such as the error at issue here. *Mateo, supra* at 210. Accordingly, we presume that the Supreme Court, in citing *Mateo*, meant merely to emphasize the following, general language from that case: “[R]eversal is only required if the error was prejudicial. That inquiry focuses on the nature of the error and assesses its effect in light of the weight and strength of the untainted evidence.” *Id.* at 215.

*Shepherd* involved a preserved, constitutional error. See *Sheperd, supra* at 346-347. The *Shepherd* Court stated that “[a] constitutional error is harmless if [it is] clear beyond a reasonable doubt that a rational jury would have found the defendant guilty absent the error.” *Id.* at 347 (internal citations and quotation marks omitted). The Court also stated: “[T]o safeguard the jury trial guarantee, a reviewing court must conduct a thorough examination of the record in order to evaluate whether it is clear, beyond a reasonable doubt, that the jury verdict would have been the same absent the error.” *Id.* at 348 (internal citation and quotation marks omitted).

After once again reviewing the record in this case and applying the standards from *Mateo* and *Sheperd*, we find no basis on which to reverse defendant’s conviction.

As noted in *Lawson I*, witness Eric Davis, a fellow inmate of defendant’s, provided testimony in support of defendant’s conviction. Davis testified that he telephoned a friend, Kisha Gabrielle, and, in accordance with defendant’s request, asked her to place a third party call to defendant’s cousin, Larry Wilson, in order to convey a message to dispose of a gun. Davis also testified that after the telephone call, defendant told Davis that the codefendant had paid him \$250 to kill the victim. Defendant contends that Davis’s testimony was not credible because, even though Davis told a police officer that he made the call in the evening, after 3:00 p.m., telephone records from the day in question only indicated a telephone call to Gabrielle’s number at 8:28 a.m. Defendant also points out that Davis testified that he made the telephone call immediately after defendant asked him to do so, even though testimony indicated that defendant was not present at the jail unit from 1:00 p.m. on the day in question until 12:31 a.m. on the following day.

As also noted in *Lawson I*, another inmate, Tyrone Sanford, provided additional inculpatory testimony against defendant. Defendant claims that Sanford’s testimony was not credible because it provided an account of the killing that differed from the codefendant’s account and was instead consistent with a newspaper article. Defendant also emphasizes that Sanford admitted that he was hoping for a downward sentencing departure in exchange for his testimony.

Excluding the improperly admitted evidence, the testimony of Davis and Sanford provided the primary evidence against defendant. Despite defendant’s attempts to discredit the testimony of these two individuals, we conclude that it is clear, beyond a reasonable doubt, that the jury verdict would have been the same absent the improperly admitted evidence.

First, we note that Edward Williams, a police officer, provided testimony that corroborated the making of the telephone call about which Davis testified. According to Williams, defendant indicated that he understood the police wanted to speak to Larry Wilson and further indicated that a conversation with Wilson would be fruitless because defendant had already spoken to him. Williams testified that defendant then indicated that a man in an adjoining jail cell had placed the telephone call to Wilson. Accordingly, Davis’s testimony on crucial points was credible, despite his criminal record and despite the fact that he may have been mistaken regarding the time he made the telephone call in question.

With regard to Sanford, we agree that his testimony was problematic in some respects. Specifically, he admitted that he was hoping for a downward sentencing departure in exchange for testifying. Moreover, when describing the killing of the victim, he indicated that three men were involved – an incorrect detail included in a newspaper article about the crime. Nevertheless, Sanford provided testimony that defendant told him that he was in jail for killing the codefendant's mother and that the codefendant hired him to kill his mother for \$250. This was consistent with the testimony provided by Davis, suggesting that defendant did indeed make admissions to Sanford and Davis.

In light of the weight and strength of Davis and Sanford's testimony, and in light of the corroborating testimony that defendant and the codefendant met at a Pizza Hut restaurant shortly after the time of the shooting, we believe that the admission of the codefendant's statements was not prejudicial. *Mateo, supra* at 215. After thoroughly examining the record, we conclude that "it is clear, beyond a reasonable doubt, that the jury verdict would have been the same absent the error." *Sheperd, supra* at 348.

We note that two earlier juries, when presented with largely the same evidence that we rely on here, were not able to reach a conclusion regarding defendant's guilt. As in *Lawson I*, however, we reject the suggestion that the two earlier hung juries preclude us from finding harmless error in this case.

Indeed, each jury stands as a separate fact-finding entity. . . . [T]o accept [such a proposition] would mean that a defendant whose trial results in a hung jury could never be retried on the same evidence, because the hung jury result essentially would be demonstrative of insufficient evidence to convict. [*Lawson I, supra*, slip op at 2 n 2.]

We conclude that we simply cannot rely on the actions of earlier juries in analyzing the harmless-error issue involved in this case.

Affirmed.

/s/ Christopher M. Murray

/s/ Patrick M. Meter

/s/ Donald S. Owens