

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
November 29, 2011

v

TIMMY JUNIOR DOSS,

Defendant-Appellant.

No. 299519
Kalamazoo Circuit Court
LC No. 2009-001893-FC

Before: JANSEN, P.J., and SAWYER and SHAPIRO, JJ.

SHAPIRO, J. (*concurring*).

I concur in affirming defendant's conviction. I write separately to note the trial court's error in its application of MRE 609. The trial court denied defendant's motion in limine to bar the prosecution from impeaching defendant with his prior conviction for home invasion. The trial court stated it was doing so pursuant to MRE 609(a)(1) because the crime of home invasion contained an element of false statement. This is plainly incorrect; the crime of home invasion does not contain an element of false statement. Indeed, the prosecution concedes this to be the case.

Accordingly, the trial court should have analyzed the issue under MRE 609(a)(2). In my view, the proper ruling on MRE 609(a)(2) would have been to exclude impeachment based on the home invasion conviction given its relatively low probative value and the substantial risk that allowing such impeachment would keep the defendant from testifying when his own testimony was central to the defense.

I do not believe, however, that this constitutes reversible error under the facts of this case. First, I cannot conclude that it would necessarily have been an abuse of discretion for the trial court to have allowed this impeachment under MRE 609(a)(2). More important, after review of the record, I conclude that the reference to defendant's prior conviction was at best a minor factor in the jury's determination. Notably, the jury accepted much of defendant's testimony by acquitting him of both first and second degree murder and instead convicting him of voluntary manslaughter. Second, defendant altered his explanation of events on several occasions during the course of the investigation and it was based upon these changes in his explanation that the prosecution asserted that defendant was not credible, not the fact that he had a prior conviction for home invasion.

Accordingly, I believe the trial court was in error, but that the error was harmless when considered in the context of the entire trial.

/s/ Douglas B. Shapiro