

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

UNPUBLISHED
April 24, 2014

v

ALVIN FRANKLIN, JR.,

Defendant-Appellant.

No. 314425
Ingham County Circuit Court
LC No. 12-000430-FH

Before: BORRELLO, P.J., and WHITBECK and K. F. KELLY, JJ.

PER CURIAM.

Defendant, Alvin Franklin, Jr., appeals as of right his convictions, following a jury trial, of unarmed robbery¹ and conspiracy to commit unarmed robbery.² The trial court sentenced Franklin as a fourth-offense habitual offender³ to serve concurrent terms of 6 to 20 years' imprisonment for each conviction. We affirm.

I. FACTS

A. BACKGROUND FACTS

Stephen Owel, Jr., testified that at about 2:00 a.m. on April 21, 2012, two men entered the Speedway gas station at which he was working. According to Owel, Franklin grabbed him around the neck and demanded money from the cash register. The men stole lottery tickets, money from the cash register, and Owel's wallet before they left together in a U-haul truck.

B. BREWER'S TESTIMONY

At trial, Wilbert Brewer testified that he and Franklin robbed the Speedway at which Owel was working. Brewer testified that Franklin told him that he needed to "have [Franklin's]

¹ MCL 750.530.

² MCL 750.157a.

³ MCL 769.12.

back” while he went inside the gas station to get the money. Brewer understood Franklin to mean that he and Franklin would go inside and “snatch the money” illegally.

Brewer testified that, after he was arrested, he confessed to the police about his involvement in the crime. Brewer testified that he did not have a plea deal when he confessed, but he ultimately reached a plea agreement with the prosecutor’s office. Brewer testified that his plea agreement was that his sentence would not exceed 12 months if he pleaded guilty to unarmed robbery and agreed to testify truthfully regarding his and Franklin’s involvement.

On cross-examination, defense counsel asked Brewer the following questions:

Q. You just testified that you were a former Lansing Police Officer?

A. Yes.

Q. Okay. For five years?

A. Yes.

Q. Okay. And how did your termination end [sic] there? Did you quit?

A. No, I was terminated.

Q. You were terminated. And why was that?

[The prosecutor]. Objection. Relevance.

THE COURT. What’s the relevance of that, ma’am?

[Defense counsel]. Your Honor, depending on the reason for his termination, if he is going to be credible as a witness and I would like to know a little bit of background.

THE COURT. Well, I think that it’s objectionable.

[Defense counsel]. Okay.

THE COURT. You need to confine to this case. He said he got fired so that’s all we need of that.

The jury ultimately found Franklin guilty of armed robbery.

II. RIGHT TO CONFRONTATION

A. LEGAL STANDARDS

Both the United States and Michigan constitutions protect a defendant's right to confront the witnesses against him- or herself.⁴ "A primary interest secured by the Confrontation Clause is the right of cross-examination."⁵ The trial court may not deny a defendant "a reasonable opportunity to test the truth of a witness'[s] testimony."⁶

B. APPLYING THE STANDARDS

Franklin contends that the trial court's limitation on his right to cross-examine Brewer regarding his former employment with the Lansing Police Department denied him his right to confront Brewer. Franklin contends that the trial court's ruling prevented him from testing Brewer's credibility by exploring whether he was dishonest or committed misconduct as a police officer.

Relevant evidence is evidence that has any tendency to make a fact of consequence more or less probable.⁷ "[T]he jury is generally entitled to weigh all evidence that might bear on the truth or accuracy of a witness's testimony."⁸ A trial court's decision to exclude evidence may deny a defendant his or her right to confrontation if the ruling prevents the defendant "from placing before the jury facts from which bias, prejudice, or lack of credibility of a prosecution witness might be inferred"⁹

However, the trial court may "impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witnesses' safety, or interrogation that is repetitive or only marginally relevant."¹⁰ For instance, the trial court may exclude even relevant evidence if the danger of its prejudicial effect substantially outweighs its probative value.¹¹

⁴ US Const, Am VI; Const 1963, art 1, § 20.

⁵ *People v Adamski*, 198 Mich App 133, 138; 497 NW2d 546 (1993). See *Delaware v Van Arsdall*, 475 US 673, 678; 106 S Ct 1431; 89 L Ed 2d 674 (1986).

⁶ *Hackett*, 421 Mich at 347.

⁷ MRE 401.

⁸ *People v King*, 297 Mich App 465, 476-477; 824 NW2d 258 (2012). See *Davis v Alaska*, 415 US 308, 316; 94 S Ct 1105; 39 L Ed 2d 347 (1974); *Layher*, 464 Mich at 765.

⁹ *People v Kelly*, 231 Mich App 627, 644; 588 NW2d 480 (1998). See *Davis*, 415 US at 316.

¹⁰ *Van Arsdall*, 475 US at 679.

¹¹ MRE 403; *People v Blackston*, 481 Mich 451, 462; 751 NW2d 408 (2008).

We conclude that the trial court's decision to exclude as irrelevant Brewer's testimony about the reason why he was terminated was incorrect. There was no offer of proof regarding the reasons for Brewer's termination. Thus, these reasons *may* have been evidence that Brewer was not a credible witness. For instance, if the Lansing Police Department fired Brewer for falsifying police reports, it would be highly relevant to his credibility. Additionally, there is no indication that the trial court considered why the Lansing Police Department fired Brewer and found the evidence unfairly prejudicial or only marginally relevant, or excluded the evidence on the basis of some other reasonable concern.

However, we conclude that Franklin has not shown that the trial court's decision, even if incorrect, prejudiced him. This Court will not reverse a conviction on the basis of a harmless error.¹²

Though Franklin contends that the Lansing Police Department may have fired Brewer for misconduct or dishonesty, it is equally likely that the Lansing Police Department may have terminated his employment for some reason not bearing on his credibility as a witness, such as downsizing. There is no indication that Brewer's testimony would have affected the jury's determination of his credibility and thus affected the outcome of Franklin's proceedings.

Further, when properly admitted evidence corroborates a witness's improper testimony, it is less likely that the error affected the outcome of the lower court proceedings.¹³ Here, Owel testified that Franklin and Brewer came into the store together, rushed into his office, and then worked together to take money, lottery tickets, and his wallet before fleeing. Owel's testimony strongly corroborated Brewer's testimony, and provided evidence of the unarmed

III. CONCLUSION

We conclude that Franklin has not shown that the trial court's decision to exclude that evidence prejudiced him. Therefore, the error was harmless.

We affirm.

/s/ Stephen L. Borrello
/s/ William C. Whitbeck

¹² MCR 2.613; *People v Lyon*, 227 Mich App 599, 612-613; 577 NW2d 124 (1998).

¹³ See *People v Jones*, 468 Mich 345, 356; 662 NW2d 376 (2003).