

SUPREME COURT OF LOUISIANA

99-KK-3278

STATE OF LOUISIANA

versus

GERARD BELL

KNOLL, Justice, dissenting.

Although I agree with the majority's determination that the trial court erred when it admitted the evidence of the earlier robbery, I find, as did the appellate court, that the error was harmless in light of the overwhelming evidence of defendant's guilt.

Louisiana's harmless error test as enunciated in Chapman v. California, 386 U.S. 13, 24 (1967), examines whether it appears "beyond a reasonable doubt that the error complained of did not contribute to the verdict obtained." Later, in Sullivan v. Louisiana, 508 U.S. 275, 278-79 (1993), the Court determined that the pivotal inquiry is "not whether, in a trial that occurred without the error, a guilty verdict would surely have been rendered, but whether a guilty verdict actually rendered in this trial was surely attributable to the error." See also State v. Johnson, 94-1379 (La. 11/27/95), 664 So. 2d 94.

In finding that the evidence against the defendant in the present case was not overly strong, the majority premises its discussion on the testimony of McCrystal and Gautreau, the co-perpetrators of the charged crime. Although the jury heard that these two witnesses testified with the "hope" that their testimony would be taken into consideration when their involvement with this armed robbery was addressed, the jury heard that no "specific deal" had been offered to McCrystal and that the State had not offered Gautreau anything in return for his testimony.

In my view, the majority's determination in this matter skews the fact-finding process in criminal proceedings. It is axiomatic that witness credibility is well within the province of the jury. The appropriate course of action, in my view, is to have the State present the testimony of co-perpetrators and let the jury make the credibility call. The jury verdict in the present case, 10 to 2, indicates to me that this jury when presented with the facts in this case fully weighed the testimony of defendant's co-perpetrators in light of whatever motive they might have for testifying and made a fully considered decision. Despite the fact that McCrystal and Gautreau's testimonies may have been jaundiced by this fact, it is apparent that the jury

weighed these factors in its assessment of the credibility of these witnesses and the determination of defendant's guilt.

Although the testimony of the co-perpetrators does not necessarily taint a jury's finding of guilt, the reality of the matter is that many times the State has no other alternative in its quest to bring criminals to justice. The State takes its witnesses as it finds them.

Accordingly, I would affirm the defendant's conviction, finding that the admission of the other crimes evidence was harmless error.