STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HERMAN RANDALL WATSON,

Defendant-Appellant.

UNPUBLISHED
July 20, 1999

No. 204348
St. Clair Circuit Court
LC No. 96-003937 FH

Before: Sawyer, P.J., and Holbrook, Jr., and W. E. Collette,* JJ.

MEMORANDUM.

Following a jury trial, defendant was convicted of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv), and he was sentenced to five to forty years' imprisonment as a second drug offender/third habitual offender. In this appeal of right, defendant contends that the prosecution and the trial court violated his due process rights by intimidating a prosecution witness into returning to the stand and changing his testimony, by confronting the witness with the possibility of perjury and/or contempt of court proceedings after he testified favorably to the defense. We disagree and therefore affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

It is questionable whether the issue of witness intimidation has been properly preserved for appellate review, since defense counsel never asked the trial court to determine whether the witness had in fact been intimidated. See *People v Stacy*, 193 Mich App 19, 28; 484 NW2d 675 (1992). Rather, defense counsel merely argued that the witness' changed testimony lacked credibility, and that it was inappropriate for a police officer to talk to the witness about his testimony without the witness' counsel being present.

The testimony of the witness and the police officer who talked to him indicates that the witness was not threatened or confronted with the possibility of being prosecuted for perjury, nor was the witness otherwise intimidated into changing his testimony. In fact, by all accounts, it was the witness, not the police officer, who brought up the subject of perjury. Moreover, both the witness' original

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* Circuit judge, sitting on the Court of Appeals by assignment.

favorable testimony and the witness' subsequent unfavorable testimony, as well as the facts surrounding his intervening conversation with the police officer, were presented for the jury to consider and evaluate. Under these circumstances, we are unpersuaded that defendant was deprived of his right to due process and a fair trial. *Stacy*, *supra* at 28.

Affirmed.

/s/ David H. Sawyer
/s/ Donald E. Holbrook, Jr.
/s/ William E. Collette