

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ROBERT HAROLD DORAN,

Defendant-Appellant.

UNPUBLISHED

November 28, 2000

No. 221701

Houghton Circuit Court

LC No. 98-001600-FH

Before: Gribbs, P.J., and Kelly and Hoekstra, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of second-degree home invasion, MCL 750.110a(3); MSA 28.305(a)(3). The trial court sentenced him to a term of 30 to 180 months' imprisonment. Defendant appeals as of right. We affirm his conviction, but remand for amendment of the judgment of sentence.

In the instant case, the defense advanced at trial was that defendant acted under duress when he broke into the victim's home. Defendant claimed he feared for his life after repeatedly being threatened by the victim, and that he believed he had to remove the victim's firearms to protect himself. When advancing a duress defense, a defendant bears the burden of making out a prima facie showing of the elements of duress. *People v Lemons*, 454 Mich 234, 247; 562 NW2d 447 (1997). To assert a successful duress defense, a defendant must produce evidence from which a jury could conclude the following:

A) The threatening conduct was sufficient to create in the mind of a reasonable person the fear of death or serious bodily harm;

B) The conduct in fact caused such fear of death or serious bodily harm in the mind of the defendant;

C) The fear or duress was operating upon the mind of the defendant at the time of the alleged act; and

D) The defendant committed the act to avoid the threatened harm. [*Id.*, quoting *People v Luther*, 394 Mich 619, 623; 232 NW2d 184 (1975) (footnote omitted).]

On appeal, defendant argues that the trial court erred in excluding evidence that supported his defense of duress. Specifically, defendant challenges the trial court's rulings regarding evidence of (1) defendant's belief that the victim in this matter was a drug dealer, (2) the victim's drinking habits, and (3) taped messages left by the victim on defendant's mother's answering machine. This Court reviews a trial court's evidentiary rulings for an abuse of discretion. *People v Ullah*, 216 Mich App 669, 673; 550 NW2d 568 (1996). We find no abuse of discretion here.

In ruling inadmissible defendant's statements to police that he believed the victim was a drug dealer, the trial court indicated to defense counsel that if he had evidence, beyond mere speculation, that the victim was in fact a drug dealer, the evidence could be admitted. Additionally, the trial court found that the tape of phone calls made to defendant's mother's home was garbled and not evidence of a present threat to defendant. The threat of future harm is not enough to support a duress defense. *Lemons, supra* at 247. The trial court also excluded evidence regarding the victim's disposition when drinking because evidence at trial established that there had been no contact between defendant and the victim for some time prior to the offense. We find no abuse of discretion.

Further, even had the trial court abused its discretion in any of these rulings, the error would not have required reversal because it is not more probable than not that the court's rulings were outcome determinative. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). The jury heard ample evidence relating to defendant's duress defense, including the testimony of witnesses and the victim himself, who acknowledged his threatening and harassing behavior. The jury also heard defendant testify about the threats, as well as his admission to the jury that he did indeed commit the crime.

Defendant also argues that the trial court exceeded its sentencing power when it ordered that defendant not be paroled to the area that comprises the 12th Circuit. The Department of Corrections has exclusive jurisdiction over parole matters. MCL 791.204(b); MSA 28.2274(b); *White-Bey v Corrections Dep't*, 239 Mich App 221, 225; 608 NW2d 833 (1999); *Hopkins v Michigan Parole Bd*, 237 Mich App 629, 641; 604 NW2d 686 (1999). Absent statutory authority, a sentencing court is not empowered to impose parole conditions. *People v Greenberg*, 176 Mich App 296, 310-311; 439 NW2d 336 (1989). An unlawful parole condition should be deleted when a sentencing court has exceeded its sentencing power. *Id.*

The condition restricting the location of defendant's parole was not imposed pursuant to the authority of any statute, and was therefore outside the power of the sentencing court. We therefore remand to the trial court with instructions to delete the parole condition from the judgment of sentence.

Defendant's conviction is affirmed. Remanded for the limited purpose of correcting the judgment of sentence. We do not retain jurisdiction.

/s/ Roman S. Gribbs
/s/ Michael J. Kelly
/s/ Joel P. Hoekstra