

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

THOMAS ALLEN LENTZ,

Defendant-Appellant.

UNPUBLISHED
December 8, 2000

No. 212814
Monroe Circuit Court
LC No. 97-028634-FH

Before: Bandstra, C.J., and Fitzgerald and D. B. Leiber*, JJ.

MEMORANDUM.

Defendant appeals as of right from his conviction of delivery of less than fifty grams of cocaine, MCL 333.7401(2)(a)(iv); MSA 14.15(7401)(2)(a)(iv). We affirm.

Defendant's trial lasted for one and one-half days. After deliberating for three and one-half hours, the jury sent a note to the court indicating that it was hung, and inquiring whether it should continue deliberating. The court proposed reading SJI2d 3.12, the standard deadlocked jury instruction, to the jury. Defendant objected, contending that to read the instruction without inquiring as to whether the jurors felt that further deliberation would be helpful would be tantamount to coercing the jury into reaching a verdict. The court rejected defendant's argument, and read the instruction without making inquiry into the status of the deliberations. After deliberating for a further one and one-half hours, the jury found defendant guilty as charged. The trial court denied defendant's motion for a new trial, and sentenced him to five to twenty years in prison, with credit for thirty-nine days.

Defendant argues that the trial court abused its discretion by reading SJI2d 3.12 to the jury without first determining that further deliberations could yield a verdict. We disagree and affirm defendant's conviction. The giving of an instruction such as SJI2d 3.12 is an appropriate response to a jury's indication that it is deadlocked. See, e.g., *People v Sullivan*, 392 Mich 324, 342; 220 NW2d 441 (1974); *People v Larry*, 162 Mich App 142, 149; 412 NW2d 674 (1987). A trial court is not required to inquire into the status of the deliberations prior to reading the instruction. Defendant's claim that the reading of the instruction coerced the jury into reaching a verdict is not supported by the record. Claims of coerced verdicts are reviewed on a case-by-case basis. All facts and circumstances, as well as the language used by the court, must be considered

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

in making the determination. *People v Turner*, 213 Mich App 558, 583; 540 NW2d 728 (1995). In its note, the jury stated that it was hung, but asked if it should continue deliberating. This indicates that the jurors had not come to a firm conclusion that reaching a verdict was not possible. Moreover, the instruction read to the jury clearly stated that while the jurors were to discuss the matter frankly and openly, no juror was to compromise his or her judgment simply for the sake of reaching a verdict. The trial court did not abuse its discretion by instructing the jury as it did.

Affirmed.

/s/ Richard A. Bandstra
/s/ E. Thomas Fitzgerald
/s/ Dennis B. Leiber