STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 25, 2001
v	No. 220074 Macomb Circuit Court
JERMAL DEONDRAI MADISON, Defendant-Appellant.	LC No. 98-001806-FH

Before: Hood, P.J., and Doctoroff and K.F. Kelly, JJ.

PER CURIAM.

Defendant appeals as of right after his conviction by a jury of one count of extortion, MCL 750.213; MSA 28.410. Defendant was sentenced to three years' probation with the first six months to be served in the Macomb County jail. We affirm.

This case arises out events that occurred after the theft of a 1997 Chevy Tahoe in April 1998. Approximately one week later, someone calling himself Drake left a message on the vehicle owners' answering machine, stating that he had something important to discuss, and leaving a cellular telephone number. The following day the owner called the cellular telephone number and was told that he could get his vehicle back if he paid $600. The owner called the police and, with advice from a detective, contacted Drake again. Drake told the owner that if he did not get the money, the truck would be "long gone."

The owner negotiated with Drake to make the exchange that afternoon in a parking lot in Eastpointe at Eight Mile and Gratiot. The police set up surveillance at the parking lot with an officer assuming the owner's identity and waited for Drake to arrive. When Drake did not arrive at the appointed time, the owner contacted Drake on one telephone line with the police on another line. The police observed a vehicle similar to the stolen automobile that was driven by a person who was talking on a cell telephone and who was later identified as defendant. After he parked the vehicle, an officer took defendant into custody.

Defendant first argues that there was insufficient evidence to sustain a conviction of extortion because there was no threat of injury to the owner or his vehicle if he refused to pay the $600. We disagree.

In reviewing a claim of insufficient evidence, we view the evidence in the light most favorable to the prosecutor and determine whether there was sufficient evidence for a rational trier of fact to find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Johnson,* 460 Mich 720, 722-723; 597 NW2d 73 (1999). This Court must not interfere with the jury's role of determining the weight of the evidence or the credibility of witnesses. *People v Stiller,* 242 Mich App 38, 42; 617 NW2d 697 (2000).

The extortion statute provides that

> [a]ny person who . . . shall orally or by any written or printed communication maliciously threaten any injury to the person or property . . . of another with intent thereby to extort money or any pecuniary advantage whatever, or with intent to compel the person so threatened to do or refrain from doing any act against his will, shall be guilty of a felony . . . [MCL 750.213; MSA 28.410.]

The threat to a victim of extortion cannot be minor and must involve serious consequences either to the victim's detriment or the extortionist's advantage. *People v Fobb*, 145 Mich App 786, 791-792; 378 NW2d 600 (1985).

In this case, the evidence showed that defendant told the vehicle owner "if you want to see your car, call me back when you get the money," and "make sure I get the f-ing money or me and your truck will be long gone." In addition, defendant told a police officer that he told the owner he wanted $600 for the safe return of the vehicle. Taken in the light most favorable to the prosecution, we conclude that a reasonable person could find that defendant made a threat of injury to the vehicle owner's property with serious consequences to the owner's detriment, namely, the loss of $600 or the loss of his vehicle.

Defendant's second argument is that evidence regarding the telephone message received by the owner and other telephone conversations should not have been admitted because they were hearsay and lacked adequate foundation. Generally, to preserve an issue regarding the admission of evidence on appeal, the party must have objected to the evidence at trial. *People v Hannold*, 217 Mich App 382, 391; 551 NW2d 710 (1996). In this case, defendant objected to the owner's testimony regarding the initial telephone message, but did not object to testimony regarding other telephone calls that occurred throughout the day of the attempted vehicle exchange. Further, defendant specifically stated that he had no objection to the admission of the owner's written account of the events on that day. Accordingly, the only evidentiary issue properly preserved for appeal was the admission of evidence relating to the initial telephone message.

The decision whether to admit evidence is within the sound discretion of the trial court and will not be disturbed on appeal absent an abuse of discretion. *People v Lugo,* 214 Mich App 699, 709; 542 NW2d 921 (1995). An abuse of discretion occurs where a court's action is so violative of fact and logic as to constitute perversity of will or defiance of judgment. *People v Laws,* 218 Mich App 447, 456; 554 NW2d 586 (1996).

MRE 801(d)(2) provides that "[a] statement is not hearsay if . . . [t]he statement is offered against a party and is (A) the party's own statement . . ." A sufficient foundation must be laid to

establish that the party actually made the statement. *Merrow v Bofferding*, 458 Mich 617, 633; 581 NW2d 696 (1998). In this case, the prosecution used circumstantial evidence to establish that defendant was the person who had the telephone conversations with the owner. That evidence included testimony that the owner was talking on one telephone line with the person requesting money, and on the other line with a police detective. During those conversations, the detective saw defendant drive to the appointed place in the stolen vehicle while talking on a cellular telephone. At the same time, the owner was told by the person wanting money that he was "right here" at the appointed place. Based on that foundation evidence, we conclude that the trial court did not abuse its discretion when it admitted the testimony about the initial telephone message.

Regarding defendant's unpreserved claims of improperly admitted evidence, to avoid forfeiture, defendant must show that 1) an error occurred, 2) the error was plain, i.e., clear or obvious, and 3) the plain error affected his substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). This test applies to unpreserved allegations of both constitutional and nonconstitutional error. *Id*. at 764.

Here, defendant claims that admission of the other telephone conversations was error because the owner was not familiar with defendant's voice and could not identify defendant as the caller. Defendant also argues that the caller's self-identification as "Drake" is insufficient to lay a proper foundation. However, identification of defendant's voice was not an issue in this case. No where in the record was the owner asked to identify the caller's voice as that of defendant. In addition, evidence that the caller referred to himself as Drake was not used to identify defendant as the caller. Rather, the prosecution utilized the previously discussed circumstantial evidence to establish that defendant was the caller. Based on the apparent irrelevance of the other telephone conversations to identification of defendant as the caller, we conclude that defendant has failed to show that the admission of the conversations was plain error.

Affirmed.

/s/ Harold Hood
/s/ Martin M. Doctoroff
/s/ Kirsten Frank Kelly