STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED May 11, 2004
v	No. 246268 Oakland Circuit Court
EDWARD SWAN WORTHY, Defendant-Appellant.	LC No. 01-180905-FH

Before: Fitzgerald, P.J., and Jansen and Talbot, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of receiving and concealing stolen property valued at $1,000 or more but less than $20,000, MCL 750.535(3)(a), unlawfully driving away an automobile (two counts), MCL 750.413, concealing or misrepresenting the identity of a motor vehicle, MCL 750.415(2), and resisting or obstructing a police officer in the discharge of his duty, MCL 750.479(1)(b). Defendant was sentenced, as a third habitual offender, MCL 769.11, to 3 ½ to 10 years' imprisonment for the receiving and concealing stolen property conviction, 3 ½ to 10 years' imprisonment on each conviction for unlawfully driving away an automobile, 3 ½ to 8 years' imprisonment for the concealing or misrepresenting the identity of a motor vehicle conviction, and 1 ½ to 4 years' imprisonment for the resisting or obstructing a police officer in the discharge of his duty conviction. We affirm.

Defendant's first issue on appeal is whether the trial court erred in failing to sever the charges against defendant pursuant to MCR 6.120(B). The interpretation of a court rule is a question of law that is reviewed de novo. *People v Abraham*, 256 Mich App 265, 271; 662 NW2d 836 (2003).

Defendant argues that the charges pertaining to the re-tagged vehicle are separate and distinct as they involve different time periods and different victims, and thus, should be severed. Temporal proximity is not a requirement for establishing a single scheme or plan pursuant to MCR 6.120(B). *People v McCune*, 125 Mich App 100, 103; 336 NW2d 11 (1983). Defendant was charged with involvement in the theft of two motorcycles. When defendant was arrested, the vehicle he was driving during the motorcycle thefts was determined to also be stolen. The acts were joined at trial because the re-tagged vehicle was used to aid in the commission of the motorcycle thefts and thus constituted a series of acts that were connected together. Defendant's involvement in the motorcycle thefts was what led police to investigate the vehicle he was driving, and that resulted in the charges pertaining to the re-tagging of a stolen vehicle.

"Separate and distinct offenses may be charged as separate counts in an information and joined for trial where they are 'committed by the same acts at the same time and the same testimony must be relied on for conviction.'" *People v Miller,* 165 Mich App 32, 44-45; 418 NW2d 668 (1987), citing *People v Johns*, 336 Mich 617, 622-623; 59 NW2d 20 (1953). Defendant was not prejudiced by the joinder. The offenses did not involve substantially different proofs such that the jury would be confused by the testimony. *Miller, supra,* 165 Mich 45. In addition, the resources of the parties and the convenience of witnesses were served by joinder. MCR 6.120(C). The offenses were sufficiently related so that joinder was appropriate.

Defendant also argues that the trial court abused its discretion in refusing to declare a mistrial due to juror misconduct when one of the jurors went to see the area where the motorcycles were stolen. We do not agree. A trial court's denial of a motion for mistrial is reviewed for an abuse of discretion. *People v Messenger*, 221 Mich App 171, 175; 561 NW2d 463 (1997). A mistrial should be granted for an irregularity that is prejudicial to the rights of the defendant and impairs his ability to receive a fair trial. *People v Rodgers*, 248 Mich App 702, 714; 645 NW2d 294 (2001). For reversal because of extrinsic influences on a jury verdict, there must be proof that the jury was exposed to extraneous influences and that the extraneous influences created a real and substantial possibility that they could have affected the verdict. *People v Fletcher*, ___ Mich App ___; ___ NW2d ___ (Docket No. 229092, issued February 10, 2004), slip op p 5. If the extraneous influence was duplicative of evidence presented at trial or the evidence of defendant's guilt was overwhelming, any error resulting from exposure to the extraneous influence may be deemed harmless beyond a reasonable doubt. *Id.*

There was extensive testimony elicited by both sides, using diagrams and maps, regarding the apartment complex where the theft of the motorcycles was initiated, and all the jurors were subsequently taken to visit the scene. While the one juror's conduct in going to the crime scene was properly characterized as an extraneous influence, defendant has not demonstrated that this influence was not duplicative, or that it was substantially related to a material aspect of the case, or that there was a direct connection between the extrinsic material and the adverse verdict. *Fletcher, supra,* slip op, p 5. The trial court did not abuse its discretion in refusing to declare a mistrial.

Finally, defendant argues that the trial court erred in failing to dismiss the charges due to a violation of the 180-day rule. There is no merit to this claim. Legal issues presented under the 180-day rule are subject to de novo review. *People v McLaughlin*, 258 Mich App 635, 643; 672 NW2d 860 (2003). A trial court's attribution of delay is reviewed for clear error. *People v Crawford*, 232 Mich App 608, 612; 591 NW2d 669 (1998). The intended purpose of the statute is to dispose of untried charges against prison inmates so that sentences may run concurrently. *People v Chavies*, 234 Mich App 274, 280; 593 NW2d 655 (1999). The 180-day period begins when either: (1) the prosecutor has actual knowledge that the person is incarcerated in a state prison, or (2) the Department of Corrections knows or has reason to know that a criminal charge is pending against a defendant incarcerated in a state prison. MCR 6.004(D); *Crawford, supra,* 232 Mich App 612-613. Because MCL 780.131 imposes the 180-day rule only when a defendant is imprisoned in a state prison, the rule does not impact charges against an inmate incarcerated in a county jail while awaiting trial. *McLaughlin, supra,* 258 Mich App 643. A parolee who is detained due to a parole hold is not subject to the rule until parole is revoked. *Chavies, supra,* 234 Mich App 279. The 180-day rule is not applicable when the pending charge

subjects a defendant to mandatory consecutive sentencing. *Chavies*, *supra*, 234 Mich App 280. In addition, the 180-day rule does not require trial to commence within 180 days. Rather, if apparent good-faith effort is made within that period, and the prosecutor proceeds promptly toward preparing the case for trial, the rule is satisfied. MCR 6.004(D).

Defendant is not entitled to a dismissal of the charges in this case. First, all delays in the initiation of trial were directly attributable to defendant. Although defendant suggests that his retained counsel did not have permission or authority to waive the 180-day rule when counsel asked for an adjournment, he fails to cite any authority for this position. A party may not simply announce a position or assert an error and then leave it up to this Court to discover and rationalize the basis for his claims, or unravel and elaborate for him his arguments, and then search for authority either to sustain or reject the position. *Wilson v Taylor*, 457 Mich 232, 243; 577 NW2d 100 (1998). Further, defendant was being held on a parole hold in the Oakland County jail and not in a state prison. Defendant's parole had not yet been officially revoked. As such, the 180-day rule was not applicable. Defendant's sentences for the charged crimes were required to run consecutively to his parole violation, and thus, were not properly considered under the 180-day rule. *People v Falk*, 244 Mich App 718, 720; 625 NW2d 476 (2001).

Affirmed.

/s/ E. Thomas Fitzgerald
/s/ Kathleen Jansen
/s/ Michael J. Talbot