

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

EDDIE LEWIS BREWSTER,

Defendant-Appellant.

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UNPUBLISHED

May 20, 2004

No. 246820

Wayne Circuit Court

LC No. 02-008746

Before: Owens, P.J. and Kelly and R.S. Gribbs\*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree home invasion, MCL 750.110a. He was sentenced as a fourth habitual offender, MCL 769.12, to 20 to 40 years' imprisonment. Defendant appeals as of right. We affirm.

Defendant first argues that the trial court erred by not instructing the jury regarding specific intent when it expressed confusion during deliberations. "We review claims of instructional error . . . de novo." *People v Marion*, 250 Mich App 446, 448; 647 NW2d 521 (2002). Jury instructions are read as a whole, rather than extracted piecemeal to establish error. *People v Aldrich*, 246 Mich App 101, 124; 631 NW2d 67 (2001). "Where confusion is expressed by a juror, it is incumbent upon the court to guide the jury by providing a 'lucid statement of the relevant legal criteria.'" *People v Martin*, 392 Mich 553, 558; 221 NW2d 336 (1974), overruled in part on other grounds, *People v Woods*, 416 Mich 581; 331 NW2d 707 (1982).

Defendant argues that, for first-degree home invasion, the prosecution was required to prove defendant had the specific intent to commit an assault while inside the dwelling. The home invasion statute, MCL 750.110a, provides in pertinent part:

(2) A person who breaks and enters a dwelling with intent to commit a felony, larceny, or assault in the dwelling, a person who enters a dwelling without permission with intent to commit a felony, larceny, or assault in the dwelling, or a person who breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, commits a felony, larceny, or assault is guilty of home invasion in the first degree

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

if at any time while the person is entering, present in, or exiting the dwelling either of the following circumstances exists:

(a) The person is armed with a dangerous weapon.

(b) Another person is lawfully present in the dwelling.

The prosecution charged that defendant entered a home without permission and committed an assault while entering, present in, or exiting the dwelling where two individuals were lawfully present. Therefore, the prosecutor was not required to prove defendant's intent at the time of the entry; rather, it was required to prove that defendant committed an assault while in the dwelling. The trial court's instructions properly presented all the elements of first-degree home invasion to the jury. The trial court answered the jurors' questions regarding the intent element, specifically stating that they must find that defendant committed an assault when he entered, was present in, or exiting the dwelling. In addition, the trial court adequately explained that defendant must have intended to commit a battery or to make an individual reasonably fear an immediate battery. These instructions, as a whole, fairly presented the issues, set forth the elements of first-degree home invasion and protected defendant's rights.

Defendant next argues that the trial court's deadlocked jury instruction was a substantial departure from the standard jury instruction. To avoid a possibility of reversal, trial courts should give the standard deadlocked jury instruction, CJI2d 3.12. See *People v Pollick*, 448 Mich 376, 382 n 12; 531 NW2d 159 (1995). Whether a deviation is "substantial in the sense that reversal is required depends on whether the deviation renders the instruction unfair because it might have been unduly coercive." *People v Hardin*, 421 Mich 296, 316; 365 NW2d 101 (1985). The instruction must not have caused a juror to abandon his or her conscientious opinion and defer to the majority opinion solely for the sake of reaching agreement. *Id.* at 314.

The trial court read the standard jury instruction and then added "[s]ometimes it takes jurors four hours to reach a verdict, sometimes four days, sometimes four weeks." Defendant claims that these additional comments conveyed the message that the court would require the jury to deliberate until it reached a verdict. However, the trial court did not state that the jury had to deliberate until it reached a verdict. The additional language contained no pressure, threats, embarrassing assertions, or other wording that would constitute coercion. *Hardin, supra* at 315. Additionally, the trial court did not require, or threaten to require, the jury to deliberate for an unreasonable length of time. *Id.* at 316. We find that the trial court's instructions were not a substantial departure from the standard instructions.

Defendant's final argument is that the trial court abused its discretion by not allowing defense counsel to conduct voir dire. A trial court's decision regarding the scope and conduct of voir dire is reviewed for an abuse of discretion. MCR 6.412(C); *People v Tyburski*, 445 Mich 606, 618-619; 518 NW2d 441 (1994). Where the trial court conducts voir dire, it abuses its discretion "if it does not adequately question jurors regarding potential bias so that challenges for cause, or even peremptory challenges, can be intelligently exercised." *Id.* at 619. Defendant does not challenge any of the questions the trial court asked or point to an area where the jurors could have been questioned more thoroughly. Rather, he argues that he was denied a reasonable opportunity to determine which jurors were subject to challenge because he was not able to

conduct any voir dire of the jurors. But a defendant does not have the right to have his counsel conduct voir dire or even to have the court ask specific questions submitted by counsel. *Id.* at 619. The trial court's questioning here was sufficient to determine whether any juror was potentially biased, and the trial court therefore did not abuse its discretion.

Affirmed.

/s/ Donald S. Owens  
/s/ Kirsten Frank Kelly  
/s/ Roman S. Gibbs