

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WESLEY FERDARREAL ROBERTS, a/k/a  
WESLEY FERDARREL ROBERTS,

Defendant-Appellant.

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UNPUBLISHED

October 23, 2007

No. 271839

Jackson Circuit Court

LC No. 06-003202-FH

Before: Owens, P.J., and Bandstra and Davis, JJ.

PER CURIAM.

Defendant appeals as of right from his conviction of delivery of less than 50 grams of cocaine, MCL 333.7401(2)(a)(iv), entered after a jury trial. The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to 30 to 260 months in prison. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On the morning of trial, defendant requested an adjournment for the reason that a witness he had subpoenaed, Robert Shellberg, had not appeared in the courtroom. Defendant noted that Shellberg had acted as a confidential informant for the police, had arranged the transaction that resulted in defendant's arrest, and had referred to his contact as "J.P." Defendant observed that his theory was mistaken identity, and contended that he had a constitutional right to confront Shellberg and ascertain whether he (defendant) was the person with whom Shellberg had in fact dealt. The trial court denied the request to adjourn the proceedings, reasoning that defendant's right of confrontation was not affected, and that defendant could argue that the strength of the officers' identification was weakened without corroborating testimony from Shellberg.

At trial, law enforcement officers, all members of a narcotics task force team, testified that the team conducted an undercover operation with assistance from Shellberg. Shellberg telephoned a person he referred to as "J.P.," and arranged to meet him at a specific location. The officers took up positions around the meeting place to observe the transaction. A person approached Shellberg, and Shellberg and the person make a quick hand-to-hand exchange. Two officers identified defendant as the person with whom Shellberg made the exchange. A third officer identified defendant as the person taken into custody following the transaction.

A motion for adjournment must be based on good cause. *People v Jackson*, 467 Mich 272, 276; 650 NW2d 665 (2002). In determining whether good cause exists, relevant factors for

consideration include whether: the defendant asserted a constitutional right, had a legitimate reason for asserting that right, had been negligent, and had requested previous adjournments. *People v Lawton*, 196 Mich App 341, 348; 492 NW2d 810 (1992). A motion for adjournment based on the unavailability of a witness must be made as soon as possible after ascertaining the facts, MCR 2.503(C)(1), and may be granted only if the court finds that the evidence is material and that diligent efforts were made to produce the witness or evidence. MCR 2.503(C)(2). To invoke the trial court's discretion to grant an adjournment, a defendant must show both good cause and diligence. However, even if the defendant makes such a showing, the denial of a request for an adjournment is not grounds for reversal unless the defendant demonstrates prejudice as a result of the abuse of discretion. *People v Snider*, 239 Mich App 393, 421; 608 NW2d 502 (2000).

Defendant argues that the trial court abused its discretion by denying his request for an adjournment prior to trial, because Shellberg might have been able to testify that he (defendant) was not "J.P." We disagree.

In seeking an adjournment to produce Shellberg, defendant asserted his constitutional right to present a defense. Defendant sought the adjournment as soon as he discovered that Shellberg had not appeared at court to testify. Defendant had not requested adjournments to that point. Nevertheless, the trial court did not abuse its discretion by denying defendant's request. Defendant made no showing at trial that Shellberg would present testimony that would assist in the defense. Cf. *People v Pullins*, 145 Mich App 414, 416-417; 378 NW2d 502 (1985) (trial court abused discretion by refusing to adjourn proceedings one day to secure presence of alibi witness). Furthermore, defendant has made no showing on appeal, in the form of an affidavit from Shellberg, that Shellberg would have testified that defendant was not the person from whom he purchased the cocaine.

Even if Shellberg had appeared at trial and testified that defendant was not the person from whom he purchased the cocaine,<sup>1</sup> the jury would have been entitled to disregard that testimony, and to accept the testimony of the officers who identified defendant as the person with whom Shellberg made the exchange. *People v Milstead*, 250 Mich App 391, 404; 648 NW2d 648 (2002). Defendant is unable to demonstrate that he suffered prejudice as a result of the trial court's decision. Defendant is not entitled to a reversal of his conviction. *Snider, supra*.

Affirmed.

/s/ Donald S. Owens  
/s/ Richard A. Bandstra  
/s/ Alton T. Davis

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<sup>1</sup> During closing argument, defense counsel emphasized that Shellberg had not appeared at trial, and argued that defendant was the victim of mistaken identity.