

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

GREGORY HAMILTON,

Defendant-Appellant.

UNPUBLISHED

January 10, 2008

No. 275479

Oakland Circuit Court

LC No. 2006-210958-FC

Before: Fitzgerald, P.J., and Markey and Smolenski, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions by a jury of carjacking, MCL 750.529a, first-degree home invasion, MCL 750.110a(2), and interfering with a communication device, MCL 750.540(1)(5). The trial court sentenced defendant as a fourth habitual offender, MCL 769.12, to concurrent terms of 20 to 60 years in prison for carjacking, 20 to 60 years in prison for first-degree home invasion, and one to 15 years in prison for interfering with a communication device, which sentences were to be served consecutive to the sentence defendant was serving on parole at the time he committed the present offenses. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant's trial took place on Tuesday, November 4, 2006. During voir dire, the trial court noted that no trial session was scheduled for the next day. A potential juror indicated that she worked as an emergency room physician, and that while she had arranged to be away from work on Tuesday and Wednesday, she was scheduled to work on Thursday. The trial court indicated that it would intercede on the juror's behalf if proceedings continued until Thursday.

At trial, complainant identified defendant as the person who entered her apartment and took her car keys and her telephone handset. Complainant described her car and the perpetrator for the police, and noted that the perpetrator wore a white knit mask over his face. Complainant told the police that she believed that the perpetrator was the son of a former neighbor. Defendant was apprehended while driving complainant's car. Complainant's telephone was found in the car. At the police station, defendant was found to be wearing a tee shirt with eye and mouth holes cut into it.

At 4:30 p.m., the trial court finished instructing the jury, and then inquired if any juror would be unable to be present on Wednesday. The same juror who indicated during voir dire that she had arranged to be off work on Tuesday and Wednesday stated that she had made "other

arrangements.” The trial court instructed her to “[b]e here anyway”, and told all jurors to report on Wednesday. The trial court told the jury that it would deliberate until 5:00 p.m. that day. At 4:58 p.m., the jury returned a verdict of guilty of all three charges.

Defendant argues that the trial court denied him a fair trial and coerced a verdict when it told the jury to return to court on Wednesday, after having informed the jury during voir dire that no session would be held on Wednesday. We disagree.

Claims of coerced verdicts are reviewed on a case-by-case basis. We must review the facts and circumstances of the case, as well as the specific language used by the trial court, to determine whether the defendant was denied a fair trial. *People v Turner*, 213 Mich App 558, 583; 540 NW2d 728 (1995), overruled in part on other grounds by *People v Mass*, 464 Mich 615; 628 NW2d 540 (2001).

Defense counsel failed to object when the trial court indicated that the jury would be required to return on Wednesday if no verdict was reached; therefore, we review defendant’s argument for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). A trial court has broad discretion to control trial proceedings. *People v Taylor*, 252 Mich App 519, 522; 652 NW2d 526 (2002). Defendant correctly points out that the trial court changed the schedule previously announced to the jury. However, the only juror who indicated that she had made other plans was the same juror who during voir dire informed the court that she had arranged to have Wednesday off. The trial court told the jury that it would deliberate for one-half hour on Tuesday. The trial court did not inform the jury expressly or by implication that it must reach a verdict on Tuesday, or it would have no further opportunity to deliberate. Cf. *People v Malone*, 180 Mich App 347; 447 NW2d 157 (1989). Moreover, the trial court did not threaten to require the jury, which had been working the entire day, to deliberate into the early hours of the morning. Cf. *People v London*, 40 Mich App 124; 198 NW2d 723 (1972). Rather, the trial court made a reasoned decision, based on the information it had regarding the availability of the jurors, to require the jury to return the next day if necessary. The trial court did not abuse its discretion, and its words and actions did not deny defendant a fair trial. *Turner*, *supra*. Furthermore, the jury’s verdict of guilty on all counts was supported by overwhelming evidence. There was no plain error warranting relief. *Carines*, *supra*.

Affirmed.

/s/ E. Thomas Fitzgerald

/s/ Jane E. Markey

/s/ Michael R. Smolenski