

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MICHAEL PETER TAVORMINA,

Defendant-Appellant.

UNPUBLISHED

January 29, 2008

No. 275480

Oakland Circuit Court

LC No. 2006-210048-FH

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Defendant appeals as of right from his convictions of criminal sexual conduct in the second degree, MCL 750.520c, criminal sexual conduct in the third degree, MCL 750.520d, and criminal sexual conduct in the fourth degree, MCL 750.520e, entered after a jury trial. Defendant's sole issue on appeal is a challenge to the jury selection process employed to select the jury in his jury trial. Because defendant has not established that the jury selection process was improper, we affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that this Court must reverse his convictions because the record does not demonstrate that the computerized method used for selecting the prospective jurors who appeared on the list provided to the trial court was free of error. Defendant failed to object to this method of jury selection. Accordingly, he has forfeited this issue. *People v Carter*, 462 Mich 206, 215-216; 612 NW2d 144 (2000). But review has not been entirely precluded, as it would have been through affirmative waiver of the issue. *Id.* We review alleged violations of the jury selection process and the interpretation of court rules de novo. *People v Fletcher*, 260 Mich App 531, 554; 679 NW2d 127 (2004).

MCR 2.511(A) concerns the selection of jurors, and provides in pertinent part:

(2) In an action that is to be tried before a jury, the names or corresponding numbers of the prospective jurors shall be deposited in a container, and the prospective jurors must be selected for examination by a random blind draw from the container.

* * * *

(4) Prospective jurors may be selected by any other fair and impartial method directed by the court or agreed to by the parties.

This procedure applies to criminal trials as well as to civil trials. MCR 6.412(A).

In this case, prospective jurors were randomly selected by computer and placed on a printed list. The list provided to the trial court contained the names and numbers of all prospective jurors. The lists provided to the prosecutor and defense counsel contained the names and numbers of only the first 12 jurors in the array. The procedure used to select the jury in this case has been approved by this Court. In *Fletcher, supra*, the jury was selected via the same method used in this case. The defendant argued that the procedure constituted structural error requiring reversal because replacement jurors were not randomly selected. The *Fletcher* Court disagreed, noting that because the prosecutor and defense counsel did not have access to the names and numbers of the replacement jurors, there was no risk that either party could manipulate the process to ensure that certain replacement jurors were seated. The *Fletcher* Court explicitly approved this method, holding that it provided the defendant “a fair and impartial means of picking a jury, as directed by MCR 2.511(A)(4).” *Id.* at 556-557. Here, defendant’s assertion that reversal is required because the computer program used to select the jurors might have contained “a glitch or errors” is based entirely on speculation. The method by which the jury in this case was selected was fair and impartial. *Id.* Defendant is not entitled to relief.

Affirmed.

/s/ Richard A. Bandstra
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto