

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEVEN ANTONIO KNOTT,

Defendant-Appellant.

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UNPUBLISHED

July 15, 2008

No. 277105

Wayne Circuit Court

LC No. 06-009466-01

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

PER CURIAM.

Defendant appeals as of right his jury trial convictions for carjacking, MCL 750.529a(1), armed robbery, MCL 750.529, and third-degree fleeing and eluding a police officer, MCL 257.602a(3)(a). The trial court sentenced defendant to 11 to 30 years' imprisonment for the carjacking conviction, 11 to 30 years' imprisonment for the armed robbery conviction, and five years' probation for the third-degree fleeing and eluding conviction. Because the trial court did not deny defendant a fair trial by coercing the verdict, did not err in questioning a witness during trial, and did not err in sentencing defendant, we affirm.

Defendant first argues that the trial court denied defendant a fair trial because the trial court "created an atmosphere conducive to hasty deliberations" by admonishing the jury for revealing its vote count during its deliberations, declining to investigate why a reluctant juror sought to be excused from further service, and deciding to read CJI2d 3.12, the jury instruction applicable to deadlocked deliberations, twice. "Claims of coerced verdicts are reviewed on a case-by-case basis, and all of the facts and circumstances, as well as the particular language used by the trial judge, must be considered." *People v Malone*, 180 Mich App 347, 352; 447 NW2d 157 (1989). Defendant failed to challenge the trial court's decision to read CJI2d 3.12 either time, and thereby failed to preserve his challenge to the trial court's actions to that extent. *In re Hildebrant*, 216 Mich App 384, 389; 548 NW2d 715 (1996). Unpreserved challenges to the actions of the trial court are reviewed for plain error affecting defendant's substantial rights. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999).

Where a jury communicates its inability to unanimously agree on a verdict, a trial court may require the jury to continue deliberations; however, the trial court's actions must not threaten to require the jury to deliberate for an unreasonable length of time or for unreasonable intervals, or cause "a juror to abandon his conscientious dissent and defer to the majority solely

for the sake of reaching agreement.” See *People v Hardin*, 421 Mich 296, 312; 365 NW2d 101 (1984). Here, before the jury retired to deliberate, the trial court instructed the jury that:

It is not proper for you to talk directly with the judge, lawyers, court officers or other people involved in the case. As you discuss the case, you must not let anyone, even me, know how your voting stands. Therefore, until you return with a unanimous verdict, do not reveal this to anyone outside the jury room.

Defendant contends that the trial court coerced the verdict by later chastising the jury for revealing its vote count. However, the record demonstrates that the trial court admonished the jury not because it was displeased that the jury had failed to reach a verdict, but because the jury had failed to follow the trial court’s instruction when the jury communicated how its voting stood.

Also, although defendant asserts that the trial court should have continued to question the reluctant juror regarding why she was hesitant to continue serving on the jury, defendant cited no authority in support of this proposition. “An appellant may not merely announce his position and leave it to this Court to discover and rationalize the basis for his claims, nor may he give only cursory treatment of an issue with little or no citation of supporting authority.” *People v Matuszak*, 263 Mich App 42, 59; 687 NW2d 342 (2004). Nevertheless, while the trial court could have made a further inquiry on the record in accordance with MCR 6.414(B), the record shows that the trial court acted reasonably in addressing the problem presented by the juror’s reluctance to continue serving on the jury.

Defendant also argues that the trial court’s decision to read, and subsequently re-read CJI2d 3.12, the deadlocked jury instruction, created an “atmosphere conducive to hasty deliberations.” But the record demonstrates that defendant expressed his satisfaction with the trial court’s decision to read the instruction the first time, and defendant requested that the trial court re-read the instruction. Waiver is an “‘intentional relinquishment or abandonment of a known right.’” *Carines, supra* at 762 n 7, quoting *United States v Olano*, 507 U S 725, 733; 113 S Ct 1770; 123 L Ed 2d 508 (1993). As a general rule, a defendant waives the right to appellate review where defense counsel expresses satisfaction with the specific actions of a trial court. *People v Carter*, 462 Mich 206, 219; 612 NW2d 144 (2000). Waiver precludes appellate review of the issue, and extinguishes any error. *Id.* at 215-216.

Here, after the trial court read the deadlocked jury instruction, it excused the jury for the weekend and ordered the jury to return to the courtroom the following Monday. After the jury was excused, the trial court asked, “Anything else, gentlemen?” Both the prosecutor and defense counsel responded in the negative. Defense counsel’s response demonstrates that he was satisfied with the trial court’s decision to read the deadlocked jury instruction. *People v Fetterley*, 229 Mich App 511, 520; 583 NW2d 199 (1998). Moreover, because defendant requested that the trial court re-read the deadlocked jury instruction, defendant waived any objection to the trial court’s decision to read it again. Defendant does not argue, and the record does not show, that the trial court impermissibly deviated from the language set forth in CJI2d 3.12 at any point. *People v Pollick*, 448 Mich 376, 386; 531 NW2d 159 (1995). Additionally, we conclude that in context of this case, there was no “significant possibility that the jury found the instruction to be unduly coercive” either time it was given, and as such, the trial court’s

decision to read the deadlocked jury instruction twice was proper. *Id.* None of the trial court's actions with respect to the deadlocked jury, individually or in the aggregate, coerced the verdict; therefore, the trial court's actions did not deprive defendant of a fair trial.

Defendant next contends that the trial court's interrogation of a witness, passenger Sierra Griffin, was error because it impermissibly pierced the veil of judicial impartiality. This Court reviews the trial court's examination of a witness to determine whether the trial court's questions deprived defendant of a fair trial. *People v Davis*, 216 Mich App 47, 52; 549 NW2d 1 (1996). If this Court determines that the trial court's questions pierced the veil of judicial impartiality, then this Court applies the harmless error test. *Id.* at 51. An error is deemed harmless unless defendant demonstrates that "after an examination of the entire cause, it shall affirmatively appear that the error asserted has resulted in a miscarriage of justice." *People v Lukity*, 460 Mich 484, 495; 596 NW2d 607 (1999). Moreover, to prevail under a harmless error analysis a defendant must show that "it is more probable than not that a different outcome would have resulted without the error." *Id.*

A trial court may exercise broad discretion with regard to matters of trial conduct. MCL 768.29; *People v Taylor*, 252 Mich App 519, 522; 652 NW2d 526 (2002). However, in exercising its discretion, a trial court may not pierce the veil of judicial impartiality. *People v Conley*, 270 Mich App 301, 308; 715 NW2d 377 (2006). The veil of judicial impartiality is pierced where the trial court's conduct unduly influenced the fact-finder and deprived defendant of a fair trial. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). MRE 614(b) provides that: "The court may interrogate witnesses, whether called by itself or a party." "As long as the questions would be appropriate if asked by either party and, further, do not give the appearance of partiality, we believe that a trial court is free to ask questions of witnesses that assist in the search for truth." *Davis, supra* at 52. A trial court's interrogation of a witness is proper where the questions are posed in a neutral manner, and neither add to, nor distort the evidence. *Id.* at 50.

When examining a witness, the trial court may not assume the role of the prosecutor. *Davis, supra* at 51. However, that a defendant's case is damaged by the testimony elicited by the trial court does not demonstrate that the trial court assumed the role of the prosecutor. *Id.* This Court has described the test as whether the trial court's questions "may well have unjustifiably aroused suspicion in the mind of the jury as to a witness' credibility . . . and whether partiality quite possibly could have influenced the jury to the detriment of defendant's case." *People v Conyers*, 194 Mich App 395, 405; 487 NW2d 787 (1992) (internal quotations and emphasis omitted).

After reviewing the record we conclude that the trial court's brief examination of Griffin was not error because the questions posed would have been appropriate if asked by either party, did not give the appearance of partiality, and served to clarify the record evidence rather than add to, or distort the evidence. *Davis, supra* at 50, 52. In any event, even if we were to conclude that the trial court's questions pierced the veil of judicial impartiality because the questions "*possibly could* have influenced the jury to the detriment of defendant's case," *Conyers, supra* at 405, we would not find error because any resultant error would have been harmless. *Davis, supra* at 51. The record demonstrates that the carjacking charge, as it related to Griffin, was subsequently dismissed. Even if the jury relied on Griffin's testimony in response to the trial court's questioning, because the second carjacking charge was dismissed before the jury deliberated, it is

not “more probable than not that a different outcome would have resulted without the error.” *Lukity, supra* at 495. Accordingly, reversal is not warranted.

Finally, defendant contends that he was deprived of his constitutional right to be sentenced on the basis of accurate information when the trial court improperly scored 25 points under Offense Variable (“OV”) 13 of the sentencing guidelines. When reviewing a sentencing court’s scoring of a defendant’s sentencing guidelines, this Court determines whether the evidence adequately supports a particular score, and whether the sentencing court properly exercised its discretion. *People v McLaughlin*, 258 Mich App 635, 671; 672 NW2d 860 (2003). This Court reviews a trial court’s scoring decision under the sentencing guidelines for an abuse of discretion. *People v Hornsby*, 251 Mich App 462, 468; 650 NW2d 700 (2002). A trial court does not abuse its discretion where its decision falls within the range of principled outcomes. *People v Babcock*, 469 Mich 247, 269; 666 NW2d 231 (2003). “Scoring decisions for which there is any evidence in support will be upheld.” *Hornsby, supra* at 468. The construction and application of the sentencing guidelines presents a question of law, which is reviewed de novo. *People v Johnson*, 474 Mich 96, 99; 712 NW2d 703 (2006).

This case involves the application of the statutory sentencing guidelines, specifically OV 13, MCL 777.43. The rules of statutory construction apply to the application of the statutory sentencing guidelines. *People v Morson*, 471 Mich 248, 255; 685 NW2d 203 (2004). In interpreting a statute, the fundamental task of a court is to discern and give effect to the Legislature’s intent as provided in the plain language of the statute. *People v Williams*, 475 Mich 245, 250; 716 NW2d 208 (2006). Where the ordinary meaning of the statutory language is clear, further judicial construction is unnecessary. *People v Weeder*, 469 Mich 493, 497-498; 674 NW2d 372 (2004).

MCL 777.43 provides, in pertinent part:

(1) Offense variable 13 is continuing pattern of criminal behavior. Score offense variable 13 by determining which of the following apply and by assigning the number of points attributable to the one that has the highest number of points:

\* \* \*

(b) The offense was part of a pattern of felonious criminal activity involving 3 or more crimes against a person[:] 25 points

\* \* \*

(2) All of the following apply to scoring offense variable 13:

(a) For determining the appropriate points under this variable, all crimes within a 5-year period, including the sentencing offense, shall be counted regardless of whether the offense resulted in a conviction.

Here, one of the three offenses considered by the trial court when it assessed 25 points under OV 13 was a 2004 juvenile adjudication for armed robbery. At defendant’s sentencing, the trial court explained that the language of MCL 777.43(2)(a) required it to consider and assess

25 points under OV 13 on the basis of the juvenile adjudication. Defendant subsequently brought a Motion to Correct Invalid Sentence, wherein he argued that the trial court should not have assessed 25 points under OV 13 because a juvenile adjudication is not criminal in nature, hence, the juvenile adjudication should not be considered when scoring OV 13. The trial court disagreed and found OV 13 correctly scored.

Defendant does not contest that there was record evidence demonstrating that he engaged in an armed robbery, pursuant to his juvenile adjudication in 2004, less than five years prior to his current felony convictions, or that armed robbery constitutes “felonious criminal activity” pursuant to MCL 750.529. Accordingly, even if the juvenile adjudication was a civil proceeding, there was nevertheless evidence in the record that defendant engaged in “felonious criminal activity,” i.e. an armed robbery, within five years of the sentencing offenses. In other words, it was the evidence that defendant engaged in the armed robbery, and not the juvenile adjudication that defendant was guilty of the armed robbery, that the trial court properly considered when assessing 25 points under OV 13. Moreover, because the language of MCL 777.43 only limits a trial court’s consideration of “felonious criminal activity” to activity that took place within five years of the sentencing offense, and does not prohibit a trial court from considering activity in which a defendant engaged as a minor, the trial court did not abuse its discretion when it assessed 25 points for OV 13 on the basis of evidence that defendant committed an armed robbery as a juvenile.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Michael J. Talbot  
/s/ Pat M. Donofrio