STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED September 3, 2009
v DEVONTA CORDARO HARRIS, Defendant-Appellant.	No. 285667 Wayne Circuit Court LC No. 07-021515-FC

Before: Saad, C.J., and Whitbeck and Zahra, JJ.

PER CURIAM.

The jury convicted defendant of two counts of armed robbery, MCL 750.529, and two counts of carjacking, MCL 750.529a. The trial court sentenced defendant to serve concurrent terms of imprisonment of eight to 24 years for each conviction. Defendant appeals as of right. We vacate the second carjacking conviction and corresponding sentence, but otherwise affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

The prosecutor's theory of the case was that, early in the morning of November 19, 2006, in Detroit, two women were driving when they stopped to ask directions of defendant and his companion, upon which the companion produced a firearm, and the two robbed the women, forced them out of their car, then drove away in it, with defendant at the wheel.

Defendant argues that his convictions should be reversed because the prosecuting attorney engaged in improper judge shopping. We disagree.

Defendant points out that a different judge presided over the case against his companion and that the result was that the companion was assigned to youthful trainee status under the Holmes Youthful Trainee Act (HYTA). See MCL 762.11; MCL 762.14(2).

MCR 8.111(D)(1) requires that all cases arising from the same transaction be assigned to the same judge. In this case, when trial was well underway, the trial court excused the jury and stated for the record that defendant's companion's case was adjudicated by a different judge, and thus that, "[t]his case should not even be here." Defense counsel inquired if adjudication under the HYTA might be available for defendant, but the trial court replied, "not in this courtroom . . . . No way." Defense counsel did not request that the case be transferred to the other judge. The argument that the result below should be reversed because of this irregularity is thus unpreserved.

A defendant pressing an unpreserved claim of error must show a plain error that affected substantial rights. The reviewing court should reverse only when the defendant is actually innocent or the error seriously affected the fairness, integrity, or public reputation of judicial proceedings. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999).

Judge shopping is highly disfavored and can result in a violation of due process. See *People v Dunbar*, 463 Mich 606, 614-615; 625 NW2d 1 (2001). However, an irregularity in the assignment of judges does not warrant reversal where no evidence suggests that the challenged assignment "was motivated by impermissible considerations." *Armco Steel Corp v Dep't of Treasury*, 111 Mich App 426, 439; 315 NW2d 158 (1981), aff'd 419 Mich 582 (1984). Nor does mere administrative inadvertence in matters of assignment deprive the assigned judge of jurisdiction. See *Bean v State Land Office Bd*, 335 Mich 165, 174-175; 55 NW2d 779 (1952) ("The business of the courts is too important to the people of the State to permit formal details of the machinery of the designation of judges to control their jurisdiction.").

In this case, defendant disparages the prosecuting attorney's statement at trial that the failure to discover defendant's companion's earlier disposition was a "mistake," but the court below evidently accepted that explanation, and nothing on the record suggests any improper motive in the matter. We further decline defendant's implied invitation to presume that he and his companion came before their respective judges with sufficiently identical histories and other circumstances that identical sentences or adjudications would logically follow.

Because the failure to comply with MCR 8.111(D)(1) did not render the proceeding fundamentally unfair, or bring it into public disrepute, no relief is warranted.

Defendant also argues that the trial court erred in entering two convictions and sentences for carjacking. We agree. Our Supreme Court has held that the carjacking statute concerns "the taking of a motor vehicle under certain circumstances," and so where only a single vehicle is taken there can be no more than a single conviction of carjacking. *People v Davis*, 468 Mich 77, 80; 658 NW2d 800 (2003). Not in dispute in this case is that the charged criminal conduct involved the taking of only a single automobile. Accordingly, we vacate the second of defendant's two convictions and sentences for carjacking, and remand this case to the trial court for preparation of an amended judgment of sentence indicating only one such conviction and sentence, while retaining the two convictions and sentences for armed robbery.[1]

Affirmed in part, vacated in part, and remanded. We do not retain jurisdiction.

/s/ Henry William Saad
/s/ William C. Whitbeck
/s/ Brian K. Zahra

[1] The prosecutor's brief on appeal does not address the merits of this argument, but impliedly confesses error in the prayer for relief, asking this Court to "affirm defendant's convictions, save for the second count of carjacking."