

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CRESHAUN MCGEE,

Defendant-Appellant.

UNPUBLISHED

November 25, 2003

No. 241594

Wayne Circuit Court

LC No. 01-006332

Before: Cooper, P.J., and Markey and Meter, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions of carjacking, MCL 750.529a, and receiving or concealing stolen property, MCL 750.535(4)(a), entered after a bench trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

On the morning of trial, defense counsel moved for a continuance on the ground that he was not prepared because his witnesses were not present. The trial court denied the motion; however, the court indicated that, at an appropriate point, proceedings would be adjourned for two weeks to allow defense counsel time to prepare his case.

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 defendant (1) asserted a constitutional right, (2) had a legitimate reason for asserting the right, (3) had been negligent, and (4) 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. We disagree and affirm defendant's convictions. The trial began as scheduled; however, the trial court granted defendant a continuance of nearly one month to allow

defense counsel to secure witnesses and prepare his case. The witnesses appeared pursuant to subpoenas. Defendant's assertion that he was entitled to have his case adjourned indefinitely until the criminal proceedings against the witnesses were completed and they were willing to testify is without merit. Defendant's contention that the witnesses would have provided testimony that exonerated him is unsubstantiated. Also, even assuming they would have testified that defendant was not involved in the incident, we note that the trial court, sitting as the trier of fact, would have been entitled to reject that testimony as not credible and instead to accept the testimony of complainant's fiancée, who unequivocally identified defendant as a participant in the crime. See, generally, *People v Marji*, 180 Mich App 525, 542; 447 NW2d 835 (1989), remanded on other grounds sub nom *People v Thomas*, 439 Mich 896 (1991). Under all the circumstances, defendant cannot demonstrate that he was prejudiced as a result of the trial court's decision. *Snider, supra*.

Affirmed.

/s/ Jessica R. Cooper

/s/ Jane E. Markey

/s/ Patrick M. Meter