

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES HENDERSON,

Defendant-Appellant.

UNPUBLISHED

December 11, 2003

No. 243617

Wayne Circuit Court

LC No. 01-004279

Before: Cavanagh, P.J., and Jansen and O’Connell, JJ.

PER CURIAM.

Defendant was convicted of first-degree criminal sexual conduct, MCL 750.520b(1)(a), and sentenced to seven to twenty years’ imprisonment. He appeals as of right. We affirm.

When the victim was twelve years old, she would often visit defendant’s house to play with his daughters and would sometimes spend the night. On several of these visits, defendant had sexual intercourse with the victim.

Defendant first argues that his conviction should be reversed because the court clerk administered a defective oath to the jurors. We disagree. Because defendant did not object to the form of the oath below, we will only grant relief for plain error that affected defendant’s substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999). Defendant has not shown error that meets this threshold.

The court clerk administered the following oath to the jury:

Do you solemnly swear or affirm that you will well and truly try this matter between the People of the State and the Defendant at the bar whom you should have in your charge according to the laws of this State so help you God?

Comparison with the correct oath, found in MCL 768.14, reveals that the court clerk altered the phrase, “according to the evidence and the laws of this state; so help you God,” omitting the “evidence” portion. But a jury would not genuinely accept the terms of the oath as the clerk recited it and later refuse to obey the trial court’s exhortation that it was duty-bound to render its verdict based upon the evidence presented at trial. Only a particularly alert lay jury would even recognize the difference in the oral oaths. Contrary to defendant’s argument, the technical deviation is not a constitutional violation or structural infirmity that would require

automatic reversal, *People v Duncan*, 462 Mich 47, 51; 610 NW2d 551 (2000), and did not impair the legitimacy of the trial or its outcome. Because defendant fails to demonstrate any impingement on a substantial right, we will not disturb the jury's verdict on this ground. *Carines, supra*.

Defendant next argues that the trial court erred by denying his request for a mistrial after the jury sent a note to the court indicating that it was deadlocked. We disagree. We review for abuse of discretion the denial of a motion for a mistrial. *People v Alter*, 255 Mich App 194, 205; 659 NW2d 667 (2003). We give great deference to a trial court's discretionary declaration of a mistrial based on a deadlocked jury. *People v Lett*, 466 Mich 206, 219-220; 644 NW2d 743 (2002). Here, the jury deliberated for less than four hours before sending a note to the court that it was split eleven to one in favor of convicting defendant. The court did not abuse its discretion under these circumstances by denying defendant's motion for a mistrial.

Finally, defendant argues that the trial court erred by accepting the jury's verdict in light of a juror's request to speak with the trial court during the jury poll. We disagree. Defense counsel requested that the jury be polled after the verdict was announced. During the polling of the jury, after a juror was asked by the court clerk if he agreed with the jury's verdict, the juror asked, "Can I speak to you your Honor," to which the trial court replied, "You cannot speak to the Court." Then the court clerk again asked the juror, "[W]as that and is that your verdict," to which the juror replied, "Yes."

Defendant argues, in part, that it was "inherently coercive" to require the juror at issue to answer "yes" or "no" in open court whether he agreed with the verdict. But the trial court must "have each juror polled *in open court* as to whether the verdict announced is that juror's verdict." MCR 6.420(C)(emphasis added). Also, the trial court properly denied the juror's request to speak with the court. When polling the jury, MCR 6.420(C) clearly contemplates that a juror will only be asked whether he or she agrees with the announced verdict, and the juror must respond affirmatively or negatively without comment. There was no appropriate basis for further communication between the juror and the trial court at that point. MCR 6.420(C); *People v Gonzalez*, 197 Mich App 385, 402; 496 NW2d 312 (1992). Contrary to defendant's argument, this issue presents no basis for concluding that the jury's verdict was not unanimous, given that the juror at issue and all other jurors expressed agreement with the verdict when they were polled. Defendant has not established any error based on this issue.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Peter D. O'Connell