

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ERNEST LEE HUMPHREY, JR.,

Defendant-Appellant.

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UNPUBLISHED

February 5, 2004

No. 243482

Saginaw Circuit Court

LC No. 01-020417-FH

Before: Cooper, P.J., and O'Connell and Fort Hood, JJ.

MEMORANDUM.

Defendant appeals as of right his convictions of first-degree home invasion, MCL 750.110a(2); assault with intent to commit criminal sexual conduct in the second degree, MCL 750.520g(2); and unarmed robbery, MCL 750.530; entered after a jury trial. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Defendant was charged in connection with a break-in at the home of an elderly couple. After the jury was instructed and had begun deliberating, defense counsel stated that he had been approached by a local attorney who told him that a juror had discussed the case with him. The attorney told the trial court that on the previous evening his next-door neighbor told him she was sitting on a jury. She identified the attorneys conducting the case, and may have specified the charges against the defendant. The attorney stated that at that point he told the juror that he could not discuss the specifics of the case. He denied that he gave the juror any advice regarding deliberations. The parties agreed that it was not necessary to interview the juror. The trial court denied defendant's motion for a mistrial without explanation.

We review the trial court's denial of a motion for a mistrial for an abuse of discretion. *People v Alter*, 255 Mich App 194, 205; 659 NW2d 667 (2003). The denial of a motion for a mistrial based on juror misconduct constitutes an abuse of discretion only if the misconduct was such that it affected the impartiality of the jury or disqualified the jurors from exercising the powers of reason and judgment. *People v Messenger*, 221 Mich App 171, 175; 561 NW2d 463 (1997). A new trial will not be granted unless substantial harm was done to the defendant, even if the misconduct would warrant a rebuke from the trial court. *Id.* Juror misconduct can be demonstrated with evidence pertaining to outside or extraneous influences. *Id.*

Defendant argues that the trial court abused its discretion by denying his motion for a mistrial. We disagree and affirm defendant's convictions. The attorney with whom the juror

spoke acknowledged that the juror identified the attorneys conducting the case and may have specified the charges against defendant, but unequivocally denied that he discussed the specifics of the case with the juror or that he gave the juror any advice regarding deliberations. Defendant's contention that the juror's conversation with the attorney tainted the juror and affected the impartiality of the jury is completely unsubstantiated. We cannot conclude that the trial court abused its discretion by denying defendant's motion for a mistrial. *Id.*

Affirmed.

/s/ Jessica R. Cooper  
/s/ Peter D. O'Connell  
/s/ Karen M. Fort Hood