

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JOSEPH MICHAEL GROESBECK,

Defendant-Appellant.

UNPUBLISHED

November 18, 2008

No. 273063

Midland Circuit Court

LC No. 05-002476-FC

Before: Murphy, P.J., and Sawyer and Smolenski, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of domestic violence, MCL 750.81(4), unlawfully driving away a motor vehicle, MCL 750.413, and felon in possession of a firearm, MCL 750.224f. For those respective convictions, he was sentenced as a fourth habitual offender, MCL 769.12, to concurrent prison terms of forty-six to one hundred eighty months, five to thirty years, and five to thirty years. He appeals as of right. We affirm.

In addition to the crimes of which defendant was convicted, he was also tried on charges of kidnapping, MCL 750.349, aggravated stalking, MCL 750.411(i), and possession of a firearm during the commission of a felony, MCL 750.227b. The jury found him not guilty of those offenses.

At sentencing, the trial court informed defendant that, after the jury had returned its verdicts, the court officer discovered a computer printout containing pages of text addressing the definition of kidnapping. The court added that it did not believe that the information related to any of the charges of which the jury had found defendant guilty. The court also told defendant that it wanted him to be aware of the information because it might be an issue that he and his appellate lawyer might make use of should there be an appeal. The trial court thus impliedly decided to forego any evidentiary hearing, or other proceeding, to explore further the matter of extrinsic influences.

On appeal, defendant contends the trial court abused its discretion when it failed to conduct further inquiry upon discovery of the extraneous documentation in the jury room. We disagree.

A trial court's decision "whether to hold an evidentiary hearing is reviewed for an abuse of discretion." *People v Unger*, 278 Mich App 210, 217; 749 NW2d 272 (2008). A trial court

abuses its discretion when its decision results in an outcome falling outside the principled range of outcomes. *Id.*

A criminal defendant has the right to a fair and impartial jury. *People v Budzyn*, 456 Mich 77, 88; 566 NW2d 229 (1997). “During their deliberations, jurors may only consider the evidence that is presented to them in open court.” *Id.* When the jury considers materials that were not introduced into evidence, the criminal defendant is deprived of his or her Sixth Amendment rights of confrontation, cross-examination, and assistance of counsel. *Id.*

However, merely demonstrating the existence of an extrinsic influence on a jury does not automatically establish error requiring reversal. See *id.* at 88-89. The defendant must initially satisfy a two-prong test. First, the defendant must prove that the jury was exposed to extraneous influences. *Id.* at 88. Second, “the defendant must establish that these extraneous influences created a real and substantial possibility that they could have affected the jury’s verdict.” *Id.* at 89. Generally, to prove the second prong, the defendant must demonstrate that “the extraneous influence is substantially related to a material aspect of the case and that there is a direct connection between the extrinsic material and the adverse verdict.” *Id.* Once the defendant has met that initial burden, the burden shifts to the prosecution to show that the error was harmless beyond a reasonable doubt. *Id.*

In this case, the trial court did not abuse its discretion by taking a course of action that did not include an evidentiary hearing. The printout at issue contained only a discussion of the definition of kidnapping. None of the crimes defendant was convicted of—domestic violence, unlawfully driving away a motor vehicle, and felon in possession of a firearm—was related to kidnapping. Additionally, the jury did not return a guilty verdict for the only other charge that was related to kidnapping, i.e., felony-firearm, which had been charged with kidnapping as its predicate felony. Therefore, the trial court had no evidence before it suggesting a direct connection between the extrinsic material and any guilty verdict.

Defendant additionally contends that an evidentiary hearing was necessary to determine whether the computer printout influenced the jury in regard to the charges of which he was convicted. We disagree.

As a general rule, “jurors may not impeach their own verdict by subsequent affidavits showing misconduct in the jury room.” *Budzyn, supra* at 91. Additionally, jurors are presumed to follow the trial court’s instructions. *People v Dennis*, 464 Mich 567, 581; 628 NW2d 502 (2001). However, oral testimony or affidavits of jurors may be received for the purpose of bringing to light extraneous influences. See *Budzyn, supra*.

While it is clear that extrinsic information was present in the jury room during deliberations, defendant has provided no evidence to show that the extraneous influence was substantially related to a material aspect of the charges of which he was found guilty. As discussed above, the jury did not find defendant guilty of kidnapping or felony-firearm, and no other charge against defendant involved the elements of kidnapping. Therefore, an evidentiary hearing on such a matter was not warranted.

Defendant finally contends that an evidentiary hearing was necessary to determine if there were any other extrinsic influences present in the jury room during deliberations. We disagree.

Defendant has provided nothing to indicate that the jury possessed any other extrinsic material during deliberations. The only possible support for defendant's contention is an indication in the record that the jury struggled with some of the counts with which he was charged. However, the only count that the jury specifically requested further instruction on was kidnapping, which related also to the felony-firearm count. Defendant was not convicted of either, and the record contains no indication that the jury struggled in the same way in regard to any of the charges for which they returned verdicts of guilty. Therefore, defendant's contention is without adequate support to warrant a remand for an evidentiary hearing.

Affirmed.

/s/ William B. Murphy
/s/ David H. Sawyer
/s/ Michael R. Smolenski