

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CONDREA MASHATT,

Defendant-Appellant.

UNPUBLISHED

September 28, 2010

No. 292928

Wayne Circuit Court

LC No. 09-002595-FH

Before: GLEICHER, P.J., and ZAHRA and K. F. KELLY, JJ.

PER CURIAM.

A jury convicted defendant of felon in possession of a firearm, MCL 750.224f, carrying a concealed weapon, MCL 750.227, possession of less than 25 grams of cocaine, MCL 333.7403(2)(a)(v), and possession of a firearm during the commission of a felony (felony-firearm), MCL 750.227b. The trial court sentenced him, as a third habitual offender, MCL 769.11, to two to ten years' imprisonment for the felon in possession conviction, two to ten years' imprisonment for the carrying a concealed weapon conviction, and two to eight years' imprisonment for the possession of cocaine conviction, to be served concurrently but consecutive to the mandatory two-year prison term for the felony-firearm conviction. Defendant appeals as of right. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

I. BASIC FACTS AND PROCEEDINGS

Police were investigating a vacant building that they believed housed "squatters." There had been complaints of high traffic and narcotics activity. Three officers entered the back of the home. One of the officers found defendant and another man in the living room, and the two men were ordered to the floor. An officer saw defendant throw a small object across the room. When the object slid into the well-lit kitchen area, the officer could see that it was a revolver. Defendant was placed under arrest and a search of his person revealed eight rocks of cocaine in his shirt pocket.

During the early phase of the case, defense counsel requested that the revolver be analyzed for fingerprints. However, it was believed that the gun was not properly preserved for such testing. The matter proceeded to trial several months later. On the first day of trial, it was discovered that the gun had, in fact, been preserved. Defendant moved to adjourn the case to

allow for testing or, alternatively, moved to dismiss the case. The trial court denied both motions.

II. MOTION TO ADJOURN

Defendant contends that the trial court abused its discretion in denying his motion to adjourn the trial when defense counsel and the court became aware that the firearm was preserved for fingerprints. Defendant argues that he was effectively denied his constitutional right to present a defense. We disagree. A trial court's ruling on a motion for a continuance is reviewed for an abuse of discretion. *People v Steele*, 283 Mich App 472, 484; 769 NW2d 256 (2009).

This Court granted the prosecution's motion to expand the record. *People v Mashatt*, unpublished order of the Court of Appeals, issued November 23, 2009 (Docket No. 292928). The prosecution presented a lab report dated April 10, 2009, which stated that the handgun "was processed with no latent prints of comparison value being developed."

Pursuant to MCR 2.503(C)(2), an adjournment may be granted for missing evidence if the evidence is material and diligent efforts have been made to procure the evidence. When reviewing whether a trial court abused its discretion in denying a defendant's motion for a continuance, this Court considers the following factors: "(1) whether the defendant is asserting a constitutional right, (2) whether the defendant has a legitimate reason for asserting that right, . . . (3) whether the defendant was negligent in asserting his right, (4) whether the defendant is merely attempting to delay trial, and (5) whether the defendant demonstrated prejudice resulting from the trial court's decision." *People Echavarria*, 233 Mich App 356, 369; 592 NW2d 737 (1999). If a defendant has demonstrated good cause for a continuance or adjournment, denial of such a motion is not cause for reversal unless the defendant also demonstrates actual prejudice. *People v Snider*, 239 Mich App 393, 421-422; 608 NW2d 502 (2000).

A defendant has a constitutional right to present a defense. *Washington v Texas*, 388 US 14, 19; 87 S Ct 1920; 18 L Ed 2d 1019 (1967); *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008). However, evidentiary errors do not necessarily rise to the level of a constitutional error, especially where a defendant is able to present his theory of the case through other evidence. *Steele*, 283 Mich App at 489. Further, even constitutional error may be deemed harmless beyond a reasonable doubt where defendant's theory of the case is "so implausible that no reasonable jury would have found it persuasive" and where "[a]ny doubt resulting from [the] particular defense would have been unreasonable (and thus not an adequate basis for acquittal)." *Id.* at 489 n 3.

In addition to vigorously cross-examining the witnesses about the failure to test the gun for fingerprints, defense counsel asked the jury to draw a negative inference from the prosecution's failure to perform fingerprint analysis on the handgun. "That's why I asked for the gun to be fingerprinted. But they failed to do that. Well that's unfair to Mr. Mashatt. That's all up to you to determine but I submit to you that Mr. Mashatt on this particular day, he did nothing wrong. He just happened to be in the wrong place at the wrong time and he's getting screwed over by these police officers who have been gunning [for] him for a long time."

Defendant simply fails to show that the result of trial would have been different had the jury been presented with the laboratory report. Defendant was asking the jury to believe that the officers framed defendant, notwithstanding evidence that defendant and the officers had numerous prior contacts, none of which resulted in his arrest. Defendant asked the jury to believe that the officers planted both the firearm and the narcotics. Yet the jury found defendant's theory of the case implausible, reaching its verdict in less than fifteen minutes. Even assuming the trial court erred in denying the motion for a continuance or adjournment, defendant failed to show that there was actual prejudice.

Affirmed.

/s/ Elizabeth L. Gleicher

/s/ Brian K. Zahra

/s/ Kirsten Frank Kelly