

STATE OF MICHIGAN
COURT OF APPEALS

SONIA LYNETTE LAURY,

Plaintiff/Counter Defendant-
Appellee,

v

DARRIN LAMAR LAURY,

Defendant/Counter Plaintiff-
Appellant.

UNPUBLISHED
December 23, 2008

No. 280747
Genesee Circuit Court
LC No. 05-261036-PP

Before: Cavanagh, P.J., and Jansen and Meter, JJ.

PER CURIAM.

Following a bench trial, defendant was found guilty of violating a personal protection order (PPO). Defendant was sentenced to serve 30 days in jail, with credit for time served. Defendant appeals as of right. We affirm.

Defendant was charged with violating a PPO taken out against him by plaintiff, his former wife. The PPO, served on August 10, 2006, prohibited defendant from coming within plaintiff's vicinity. However, evidence presented at defendant's evidentiary hearing and trial demonstrated that defendant was outside plaintiff's apartment the night of September 29, 2006.

Defendant was originally represented in this matter by court-appointed counsel, but during the evidentiary hearing, defendant made clear his intention to no longer be represented by his court-appointed attorney. Defendant stated that he would retain counsel. The trial court set August 24, 2007, as the date for trial.

As of August 24, 2007, defendant did not have an attorney. Defendant stated that he had retained several attorneys to represent him in the matter, and that he had no idea why they had not appeared. Defendant sought another adjournment, but the trial court denied the request.

When the trial court asked defendant if he was going to present any witnesses, defendant stated that he was not going to present any witnesses without his attorney, David Grant, being present. David Grant was one of the several attorneys defendant claimed to have retained. However, the prosecutor and the trial court had already explained to defendant that Grant was his court-appointed counsel in a separate proceeding, and did not represent him in this matter.

When the trial court again asked defendant if he would like to present any witnesses, defendant responded that he wanted to call various witnesses, including the Chief of Police and several Flint police officers. However, during the earlier evidentiary hearing, defendant's court-appointed counsel and the prosecutor had informed the trial court that the witnesses defendant wanted to call would not help his case because they all disagreed with defendant's version of events. When defendant could produce no witnesses on his behalf, the trial court found that the evidence presented showed that defendant had violated the PPO.

Throughout the proceedings, defendant continually interrupted to give his own version of events, talking over both the prosecutor and the trial court. However, defendant never took the stand to testify on his own behalf.

Defendant argues that he was denied the right to testify at trial. He asserts that the trial court erred when it failed to advise defendant of the right to testify, and failed to obtain a knowing and intelligent waiver of the right to testify. We disagree.

We review defendant's unpreserved claim that he was denied the right to testify at trial for plain error. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999); *People v Conner*, 209 Mich App 419, 422; 531 NW2d 734 (1995). "To avoid forfeiture under the plain error rule, three requirements must be met: 1) error must have occurred, 2) the error was plain, i.e., clear or obvious, 3) and the plain error affected substantial rights." *Carines, supra* at 763, citing *United States v Olano*, 507 US 725, 731; 113 S Ct 1770; 123 L Ed 2d 508 (1993). Defendant has failed to meet all three requirements.

Michigan courts have no duty to advise a defendant of his right to testify, or to determine whether he knowingly and intelligently waived that right. *People v Harris*, 190 Mich App 652, 661-662; 476 NW2d 767 (1991). No error occurred; thus, defendant necessarily fails to show that the claimed error was plain, or that the error affected his substantial rights. See *Carines, supra* at 763-764.

Defendant's argument that this Court should abandon its prior position and develop a new standard for assessing alleged denials of a defendant's right to testify is unpersuasive. Defendant has failed to show that any error was made, or that any circumstances have changed, such that this Court's prior case law constitutes an outmoded rule or results in injustice. See *Corl v Huron Castings, Inc*, 450 Mich 620, 632; 544 NW2d 278 (1996); *In re Edgar Estate*, 425 Mich 364, 380; 389 NW2d 696 (1986).

Affirmed.

/s/ Mark J. Cavanagh

/s/ Kathleen Jansen

/s/ Patrick M. Meter