

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KEVIN CRAIG WATSON,

Defendant-Appellant.

UNPUBLISHED

March 20, 2007

No. 265701

Van Buren Circuit Court

LC No. 05-014446-FH

Before: O’Connell, P.J., and Murray and Davis, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of first-degree home invasion, MCL 750.110a(2). Defendant was sentenced, as an habitual offender, third offense, MCL 769.11, to 10 to 40 years’ imprisonment for his home invasion in the first-degree convictions. We affirm.

Defendant contends that it was plain error for the prosecution to make an inquiry about his silence after the arrest and receiving *Miranda*¹ warnings. We disagree. Defendant failed to preserve this issue with an objection in the trial court, so we will not reverse his conviction unless we find plain error that affected his substantial rights. *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

In *People v Boyd*, 470 Mich 363, 374-375; 682 NW2d 459 (2004), our Supreme Court held that a defendant’s silence at the time of arrest and after receiving *Miranda* warnings is not admissible at trial. However, the record here suggests that the prosecutor was not inquiring into defendant’s post-arrest, post-*Miranda* silence, but was establishing a foundation for a later confession by asking the arresting officer if defendant asked to speak to anyone at the time of the arrest. Defendant relies on the following testimony of the arresting officer during the prosecutor’s direct examination:

Q. And did he indicate whether he was willing to speak with you?

A. He did not want to speak with us at that time.

¹ *Miranda v Arizona*, 384 US 436; 86 S Ct 1602; 16 L Ed 2d 694 (1966).

Q. Did he indicate any desire to speak with anybody else?

A. He did wish to speak with Kevin Haines.

The prosecutor did not expand upon defendant's silence during the remainder of the arresting officer's examination, but later elicited testimony from the officer and Haines, a field agent for the Department of Corrections, about their later interview of defendant. The prosecutor introduced evidence that once Haines was present, defendant opened up and eventually confessed to the crime. The prosecutor did not raise the issue of defendant's silence during closing arguments, and never implied defendant's guilt from his silence. Defendant did not object to the testimony and did not request a curative instruction. Instead, defendant attempted to cure any resultant prejudice regarding the silence by cross-examining the officer on the matter. Defendant never testified, so the testimony regarding silence was not used for impeachment purposes. See *People v Dennis*, 464 Mich 567, 582-583; 628 NW2d 502 (2001). Under the circumstances, the single question and somewhat unresponsive testimony is much more analogous to the inadvertent reference in *Dennis* than the improper impeachment argument in *Doyle v Ohio*, 426 US 610, 619; 96 S Ct 2240; 49 L Ed 2d 91 (1976). Moreover, defendant cannot demonstrate that the trial's outcome or its fairness was affected by the vague and momentary reference to his temporary silence, because the same officer testified about his complete confession to the crime. Therefore, defendant has not established the existence of plain error affecting his substantial rights. *Carines, supra*.

Next, defendant argues that the trial court improperly denied him credit for time served while he awaited trial and sentencing. Defendant was a parolee when he committed the instant offense, so his argument necessarily relies on the proposition that *People v Seiders*, 262 Mich App 702, 706-707; 686 NW2d 821 (2004), improperly held that parolees should be denied credit for time served. Because *Seiders* was properly decided, we reject defendant's arguments. His assertion that *Wayne Co Prosecutor v Dep't of Corrections*, 451 Mich 569; 548 NW2d 600 (1996), undermines *Seiders* is unpersuasive. See *People v Stead*, 270 Mich App 550, 551-552; 716 NW2d 324 (2006). Therefore, the trial court correctly denied defendant credit for the time he served while awaiting his trial and sentencing.

Affirmed.

/s/ Peter D. O'Connell
/s/ Christopher M. Murray
/s/ Alton T. Davis