

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MARQUES DEONTE OSBORNE,

Defendant-Appellant.

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UNPUBLISHED

April 18, 2013

No. 306398

Kalamazoo Circuit Court

LC No. 2011-000289-FH

Before: WILDER, P.J., and METER and RIORDAN, JJ.

PER CURIAM.

Defendant Marques Deonte Osborne appeals as of right his convictions for first-degree home invasion, MCL 750.110a(2), and third-degree home invasion, MCL 750.110a(4). The trial court sentenced defendant as a habitual offender, second offense, MCL 769.10, to concurrent sentences of 6 to 30 years' imprisonment for the first-degree home invasion conviction and 24 to 90 months' imprisonment for the third-degree home invasion conviction. We affirm.

Defendant and Keyeva Richardson began to argue in the morning hours of February 5, 2011, while defendant was at Richardson's home. Richardson eventually went next door to the home of her neighbors, Clyde and Clara Bosfero, for help. Richardson asked them to "call the police" and entered their residence. Defendant followed Richardson and forced himself inside Bosferos' residence. Clyde physically forced defendant out of the residence, and defendant walked back to Richardson's home. Clyde and Richardson testified that defendant then kicked in Richardson's door and entered her home. Sometime thereafter, defendant gathered his belongings and exited Richardson's home. Defendant then went to another neighbor's residence and attempted to force himself inside, stating that the "the cops are after me." A responding officer found defendant at the second neighbor's residence and placed him under arrest.

On the first day of trial, defendant requested that the court subpoena additional witnesses. Defendant alleged that these witnesses would testify that the door to Richardson's residence was not broken later in the day of the incident. The prosecutor argued that the case was originally set for trial two months before and that the issue of the door was discussed during testimony at the preliminary examination. As such, the prosecutor argued that the trial court should deny defendant's requests. The trial court noted that the time for issuing subpoenas had long since passed and denied defendant's request. However, the trial court also noted that, as a result of its

ruling, defendant would “be limited to those witnesses that are either present voluntarily or are [prosecution] witnesses.” Defendant was convicted as previously noted.

Defendant argues that he was denied his constitutional right to present a defense when the trial court denied his request for subpoenas and his “implicit” request for an adjournment. We disagree. We review a trial court’s decision regarding compulsory process for an abuse of discretion. *People v Yeoman*, 218 Mich App 406, 413; 554 NW2d 577 (1996). “A trial court abuses its discretion when its decision falls outside the range of principled outcomes.” *People v Feezel*, 486 Mich 184, 192; 783 NW2d 67 (2010) (internal quotation marks omitted).

The Sixth and Fourteenth Amendments of the United States Constitution guarantee criminal defendants the right “to have compulsory process for obtaining witnesses” in their defense. US Const, Ams VI & XIV; *People v Kowalski*, 492 Mich 106, 139; 821 NW2d 14 (2012). “The right to offer the testimony of a witness, and to compel their attendance, if necessary, is in plain terms the right to present a defense.” *Washington v Texas*, 388 US 14, 19; 87 S Ct 1920; 18 L Ed 2d 1019 (1967).

However, this right is not absolute. *People v Yost*, 278 Mich App 341, 379; 749 NW2d 753 (2008). It “may, in appropriate cases, bow to accommodate other legitimate interests in the criminal trial process.” *Chambers v Mississippi*, 410 US 284, 295; 93 S Ct 1038; 35 L Ed 2d 297 (1973).

Here, defendant’s request to subpoena certain witnesses was made on the first day of trial. The trial court noted that it was too late at this stage of the proceeding to authorize a witness subpoena. The trial court did not abuse its discretion. A review of the record indicates that defendant made the request as the jury panel was “coming down” to the courtroom. Given the extreme lateness of the request, even if subpoenas were issued, it was doubtful that they would be served before the trial actually ended.<sup>1</sup> Therefore, we conclude that defendant’s constitutional issue has no merit because the trial court’s decision was reasonable and not an abuse of discretion.

Furthermore, a criminal defendant’s right to compulsory process requires a showing on behalf of the defendant that the witness’s testimony sought is both material and favorable to the defense. *People v McFall*, 224 Mich App 403, 408-409; 569 NW2d 828 (1997), citing *United States v Valenzuela-Bernal*, 458 US 858, 873; 102 S Ct 3440; 73 L Ed 2d 1193 (1982). Defendant stated that the witnesses would be able to testify that when they saw Richardson’s

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<sup>1</sup> We further recognize that compelling the presence of one of the proposed witnesses, defendant’s sister, would have been unnecessary and unreasonable because she was already present at the courtroom. When speaking to the trial court, defendant referred to her as “[t]his young lady” and “this woman.” From the context, it appears that he was referring to her in this manner because she was present, as opposed to the other witness, whom he referred to as being “not here.”

door later that day, it was not damaged.<sup>2</sup> However, Clyde testified that shortly after seeing defendant kick in Richardson's door, he went over there and repaired it. Thus, the fact that defendant's witnesses allegedly saw that there was no damage later that day *after repairs were made* is not material to whether defendant damaged the property at the time of his breaking and entering. Thus, in any event, defendant failed to meet the burden necessary for the compulsory process.

Defendant also argues that he requested an adjournment at the trial court, but we disagree with that premise. It is clear that defendant never asked for an adjournment at the trial court. But even assuming that defendant's request for subpoenas were treated as a tacit request for an adjournment, we find no error. This Court reviews the denial of an adjournment for an abuse of discretion. *People v Conner*, 209 Mich App 419, 422; 531 NW2d 734 (1995).

A criminal defendant's request for an adjournment must be predicated on "good cause." *People v Coy*, 258 Mich App 1, 18; 669 NW2d 831 (2003). "'Good cause' factors include 'whether defendant (1) asserted a constitutional right, (2) had a legitimate reason for asserting the right, (3) had been negligent, and (4) had requested previous adjournments.'" *Id.*, quoting *People v Lawton*, 196 Mich App 341, 348; 492 NW2d 810 (1992). Here, although not framed in "constitutional" terms defendant asserted the constitutional right of compulsory process at the trial court, and therefore, this factor would weigh in defendant's favor. However, the other factors overall heavily weigh against defendant.

There is nothing in the record to indicate that defendant had a legitimate reason for asserting the right. As noted, one of the witnesses was already present in the courtroom when he requested that she be subpoenaed, and the proffered testimony was not material because the observations of the witnesses occurred *after* the door had been repaired by the neighbor.

Further, the record indicates that defendant acted negligently. Defendant stated that he knew as of the day of his arrest that there were other witnesses who supposedly saw that the door was not damaged. Defendant later learned at the March 1, 2011, preliminary examination that any damage he caused to the door was relevant and that there was indeed testimony that the door was damaged as a result of his actions. But when defense counsel asked defendant about any potential witnesses, defendant did not mention them. More importantly, when addressing the trial court, defendant offered no reason whatsoever why he failed to bring these witnesses to anyone's attention earlier. Thus, defendant was negligent by failing to communicate the existence of these witnesses to his trial counsel when specifically asked and then waiting until June 22, 2011, the first day of trial, to seek a continuance.

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<sup>2</sup> Normally, whether the door was damaged as a result of defendant kicking it is not material to the charged offense of third-degree home invasion; however, in this instance the underlying misdemeanor in MCL 750.110a(4)(a) was the destruction of property. MCL 750.110a(4)(a) provides, in pertinent part, that a person is guilty of third-degree home invasion if he or she "breaks and enters a dwelling or enters a dwelling without permission and, at any time while he or she is entering, present in, or exiting the dwelling, *commits a misdemeanor.*" (Emphasis added.)

While the last factor does not weigh against defendant because this was his first request for an adjournment, nevertheless, it is clear that defendant failed to establish any good cause to justify an adjournment. In short, there was no justification provided for why these proposed witnesses could not have been identified and subpoenaed earlier.

Affirmed.

/s/ Kurtis T. Wilder  
/s/ Patrick M. Meter  
/s/ Michael J. Riordan