

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

MILTON HUNTER,

Defendant-Appellant.

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UNPUBLISHED

May 26, 2000

No. 210389

Wayne Circuit Court

Criminal Division

LC No. 97-004573

Before: McDonald, P.J., and Gage and Talbot, JJ.

PER CURIAM.

Defendant was convicted by a jury of assault with intent to commit murder, MCL 750.83; MSA 28.278, and possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2), but acquitted of an additional charge of carjacking, MCL 750.529a; MSA 28.797(a). He was sentenced as a fourth habitual offender, MCL 769.12; MSA 28.1084, to twenty-five to fifty years' imprisonment for the assault conviction, and a consecutive two-year term for the felony-firearm conviction. He appeals as of right. We affirm.

Defendant first argues that he was denied a fair trial because of judicial misconduct stemming from the court's comments and questions during testimony, its instructions to the jury, and its answers to the jury's questions during deliberations.

Defense counsel only objected to the court's instruction regarding carjacking, which was given in response to a question from the jury. Because defendant was acquitted of carjacking, however, it is clear that any alleged error had no effect on the verdict and, therefore, is not grounds for reversal. *People v Paquette*, 214 Mich App 336, 340; 543 NW2d 342 (1995). Because defendant did not object to the remaining alleged instances of judicial misconduct, appellate relief is foreclosed absent manifest injustice. *Id.*

Viewed in context, the court's comments during the doctor's testimony were not intimidating, argumentative, prejudicial, unfair, or partial, nor did they add to or distort the evidence. *Id.*; *People v Davis*, 216 Mich App 47, 50; 549 NW2d 1 (1996); *People v Cheeks*, 216 Mich App 470, 480; 549 NW2d 584 (1996). Further, the doctor's testimony was relevant only to the issue of intent and substantial other evidence probative of defendant's intent was presented at trial, namely, evidence that

defendant was armed with a gun, that a codefendant commanded defendant to “Kill the m----- and take his truck,” and that the victim was shot in the back. See *People v Turner*, 213 Mich App 558, 567; 540 NW2d 728 (1995). Accordingly, we find no manifest injustice arising from the court’s comments during the doctor’s testimony.

Similarly, viewed in context, the court’s instructions to the jury fairly presented the issues to be tried, sufficiently protected defendant’s rights, and did not prejudice the jury against defendant. *Paquette, supra*; *People v Gaydosh*, 203 Mich App 235, 237; 512 NW2d 65 (1994). The comments did not result in manifest injustice.

Defendant next argues that trial counsel was ineffective because she forgot his name during her opening statement, failed to object to the court’s allegedly improper comments, and failed to cross-examine the victim and his doctor more vigorously. Because defendant did not move for a *Ginther*<sup>1</sup> hearing or new trial, our review of this issue is limited to mistakes that are apparent on the record. *People v Hurst*, 205 Mich App 634, 641; 517 NW2d 858 (1994).

Assuming that counsel was deficient for forgetting her client’s name, defendant has failed to show that this deficiency affected the outcome of trial. Thus, it does not support a claim of ineffective assistance of counsel. *People v LaVearn*, 448 Mich 207, 216; 528 NW2d 721 (1995). Regarding counsel’s cross-examination of the complainant, the record indicates that, contrary to what defendant argues, counsel did in fact impeach the complainant with prior inconsistent testimony from his preliminary examination concerning his recognition of defendant.

Counsel’s cross-examination of the complainant’s doctor, and her failure to object to the court’s allegedly improper comments, were matters of trial strategy that we will not second guess. *People v Rockey*, 237 Mich App 74, 76-77; 601 NW2d 887 (1999). Moreover, the court’s comments during the doctor’s testimony were neither erroneous nor prejudicial and, therefore, counsel’s failure to object was not error. In any event, considering that the doctor’s testimony was relevant only to the issue of intent, and in light of the additional evidence of intent as discussed above, defendant cannot show that counsel’s failure to expose the doctor’s alleged bias affected the outcome of trial. Contrary to what defendant argues on appeal, ineffective assistance of counsel is not demonstrated by showing, with the benefit of hindsight, that a more experienced attorney might have done a better job at trial. See *People v Stanaway*, 446 Mich 643, 688; 521 NW2d 557 (1994).

Defendant further argues that the trial court’s comments may have improperly influenced the jury during voir dire. Defendant has not identified any specific instances of error in this regard, but represents that he will seek leave to file a supplemental brief to address this issue more fully after the full jury voir dire transcript has been filed. The transcript has since been filed, but defendant has not sought leave to file a supplemental brief. Therefore, we deem this issue abandoned. See *Joerger v Gordon Food Service, Inc*, 224 Mich App 167, 178; 568 NW2d 365 (1997).

Affirmed.

/s/ Gary R. McDonald

/s/ Hilda R. Gage

/s/ Michael J. Talbot

<sup>1</sup> *People v Ginther*, 390 Mich 436, 442-444; 212 NW2d 922 (1973).