

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

KARL BERNARD PETERSON,

Defendant-Appellant.

UNPUBLISHED

June 12, 2001

No. 216506

Saginaw Circuit Court

LC No. 97-014677-FC

Before: Cavanagh, P.J., and Markey and Collins, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to commit murder, MCL 750.83, and assault with intent to rob while armed, MCL 750.89. He was sentenced to concurrent prison terms of fifteen to fifty years for each conviction. Defendant appeals as of right. We affirm.

Defendant claims that he was denied due process and a fair trial when the trial court interviewed a prospective juror in the court's chambers in defendant's absence. Because defense counsel expressly informed the trial court that defendant's presence was not necessary, we conclude that this issue is waived. *People v Carter*, 462 Mich 206, 219; 612 NW2d 144 (2000). Because defendant waived the issue, there is no "error" to review. *Id.* Even if we were to consider this issue, however, reversal is not required because defendant has not demonstrated a reasonable possibility of prejudice. *People v Morgan*, 400 Mich 527, 535-536; 255 NW2d 603 (1977).

Next, the trial court did not abuse its discretion by providing the jury with a transcript of the victim's testimony, or by denying defendant's motion for a mistrial with regard to this issue. *People v Howe*, 392 Mich 670, 675; 221 NW2d 350 (1974); *People v Davis*, 216 Mich App 47, 56; 549 NW2d 1 (1996); *People v Wells*, 238 Mich App 383, 390; 605 NW2d 374 (1999). Although the trial court stated that it always submitted transcripts upon request by a jury, it is apparent that the trial court was aware that it had the power to grant or deny such a request. Further, there is nothing in the record to indicate that the jury's request was unreasonable. Although defendant was concerned that the jury, having received a transcript of the victim's testimony, might place too much emphasis on the victim's testimony alone, the trial court's cautionary instruction was sufficient to cure any prejudice in this regard.

Next, defendant argues that improper remarks by the prosecutor during closing argument deprived him of a fair trial. *People v Paquette*, 214 Mich App 336, 342; 543 NW2d 342 (1995). While the prosecutor may have gone beyond proper argument by referring to defendant as a “crook,” viewed in light of the evidence as a whole and considering the isolated nature of the remarks, we conclude that they did not deprive defendant of a fair trial and, therefore, do not rise to the level of error requiring reversal. *People v Launsbury*, 217 Mich App 358, 361; 551 NW2d 460 (1996).

Next, defendant argues that he was denied due process and a fair trial because of the trial court’s jury instructions on self-defense. Because the trial court instructed the jury on self-defense in accordance with defendant’s request, we conclude that this issue is waived. *Carter*, *supra*. Thus, there is no “error” to review. *Id.*

Defendant also contends that the trial court erred in instructing the jury regarding assault with intent to commit armed robbery and assault with intent to commit robbery while unarmed, because it did not instruct the jurors that the prosecutor needed to prove that defendant had the specific intent to take property from the victim with the intent to deprive the victim permanently of that property. Because defendant failed to object to the trial court’s instructions, defendant must establish a plain error affecting his substantial rights. *People v Carines*, 460 Mich 750, 761-764, 774; 597 NW2d 130 (1999). The record indicates that the jury was instructed that robbery occurs “when a person assaults someone else and takes money or property from him or in his presence, *intending to take it from the person permanently*” (emphasis added). In light of this instruction, we find no plain error.

Defendant also claims that there was insufficient evidence of an intent to kill to support his conviction of assault with intent to commit murder. We disagree. At trial, the victim testified that defendant pulled out a gun and said, “I am going to put a bullet in your head.” Defendant subsequently hit the victim numerous times in the back of the head with the gun, as well as with a broken wine bottle, causing the victim to bleed profusely. A medical doctor testified that the victim suffered a closed head injury, and that his injuries could have been fatal. Viewed in a light most favorable to the prosecution, the evidence was sufficient to enable a rational trier of fact to find beyond a reasonable doubt that defendant acted with an intent to kill. *People v Barclay*, 208 Mich App 670, 674; 528 NW2d 842 (1995).

Affirmed.

/s/ Mark J. Cavanagh
/s/ Jane E. Markey
/s/ Jeffrey G. Collins