

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

STEPHEN LOVELY,

Defendant-Appellant.

UNPUBLISHED

May 21, 2002

No. 226750

Wayne Circuit Court

LC No. 99-004362

Before: Markey, P.J., and Talbot and Zahra, JJ.

PER CURIAM.

Defendant was convicted of armed robbery, MCL 750.529, assault with intent to do great bodily harm less than murder, MCL 750.84, and possession of a firearm during the commission of a felony, MCL 750.227b. Defendant was sentenced to 225 to 720 months' imprisonment for the armed robbery conviction, 107 to 180 months' imprisonment for the assault with intent to do great bodily harm less than murder conviction, and two years' imprisonment for the felony-firearm conviction. Defendant appeals as of right. We affirm.

I.

Defendant first argues that the lower court abused its discretion when it found that his arrest was lawful. Because his arrest was not lawful, defendant argues, his inculpatory statement to police should not have been admitted at trial. We disagree.

To preserve an evidentiary issue for review, a party opposing the admission of evidence must object at trial and specify the same ground for objection that it asserts on appeal. MRE 103(a)(1); *People v Grant*, 445 Mich 535, 545; 520 NW2d 123 (1994); *People v Griffin*, 235 Mich App 27, 44; 597 NW2d 176 (1999). This argument is not preserved. Although defendant raised this issue in a post-conviction motion, defendant did not object to the legality of his arrest at trial or in a pre-trial motion.

This Court may take notice of plain errors that affected defendant's substantial rights even if not raised before the trial court. MRE 103(d); *Grant, supra*, 445 Mich 535, 545-546, 552-553. We review unpreserved claims of error for plain error that affected the defendant's substantial rights. *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Reversal is only warranted when the plain, forfeited error resulted in the conviction of an actually innocent

defendant or when the error seriously affected the fairness, integrity, or public reputation of the judicial proceedings. *Id.* Defendant cannot meet this high standard in this case.

A review of the record shows overwhelming evidence that defendant committed the crime. Carleton Taite testified that he participated in the armed robbery with defendant and Rayshawn Williams. Taite stated that defendant drove the three assailants to the Blockbuster video store. Defendant was first inside the store and announced that it was a robbery. Defendant demanded money from the employee at the register and when money was not immediately produced, defendant shot the employee in the leg. Taite testified that they divided the money and goods stolen equally in three parts. When shown a surveillance photograph of the robbery, Taite identified defendant at the crime scene. The shooting victim identified defendant as the person who shot him. Further, defendant admitted to the police that he took part in the robbery in some capacity. Therefore, defendant's substantial rights were not affected by his claim of unpreserved error. *Carines, supra*, 460 Mich 763.

II.

Defendant next argues that the lower court abused its discretion when it did not grant his motion for directed verdict of acquittal or a new trial. In considering defendant's motion for directed verdict, we must review the evidence produced by the prosecutor in the light most favorable to the prosecution, to determine whether a rational trier of fact could conclude that the essential elements of the crime charged were proved beyond a reasonable doubt. *People v Aldrich*, 246 Mich App 101, 122; 631 NW2d 67 (2001). If the evidence viewed in this light is sufficient to support a conviction, defendant is not entitled to acquittal. Additionally, we review a trial court's grant or denial of a motion for a new trial for an abuse of discretion. *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998). An abuse of discretion exists when the trial court's denial of the motion was manifestly against the clear weight of the evidence. *Id.*

Viewing the evidence in a light most favorable to the prosecution, we find that a rational trier of fact could have found that the essential elements of both armed robbery, MCL 750.529, and assault with intent to do great bodily harm less than murder, MCL 750.84 were proved beyond a reasonable doubt. *Aldrich, supra*, 246 Mich App 122. Since defendant used a firearm during the commission of the robbery and the assault, there was sufficient evidence to support defendant's felony-firearm conviction. MCL 750.227b. We further conclude that the evidence does not preponderate so heavily against the verdict that it would be a miscarriage of justice to allow it to stand. *People v Lemmon*, 456 Mich 625, 641; 576 NW2d 129 (1998); *People v Gadomski*, 232 Mich App 24, 28; 592 NW2d 75 (1998). As such, the trial court did not abuse its discretion by denying defendant's motion for a new trial.

III.

Finally, defendant argues that the lower court erred when it found that defendant's Sixth Amendment right to counsel was not violated during the pretrial motion to consolidate. Whether a defendant was denied his Sixth Amendment right to counsel is a constitutional issue. Constitutional issues are reviewed de novo. *People v Brown*, 239 Mich App 735, 750; 610 NW2d 234 (2000).

The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right to the assistance of counsel for his defense. *People v Marsack*, 231 Mich App 364, 372; 586 NW2d 234 (1998). The right to counsel attaches when a formal charge, a preliminary hearing, an indictment, an information or an arraignment commences an adversary criminal proceeding against a defendant. *Id.* at 376-377. The Sixth Amendment right to counsel extends to all critical stages of a prosecution. *People v Barnett*, 163 Mich App 331, 335; 414 NW2d 378 (1987). Critical stages in proceedings are those where “counsel’s absence might derogate from the defendant’s right to a fair trial.” *Id.*

Defendant claims he was deprived of his right to counsel when the trial court granted his attorney, Samuel J. Churikian’s, motion to withdraw as counsel, and then decided a motion to consolidate without properly appointing new or substitute counsel to represent defendant. Although the court granted Churikian’s request to be removed from the case, Churikian remained in the room and represented defendant during the consolidation motion. Churikian did, in fact, ask the court if he could be excused during the proceedings, but the court replied, “not at the moment.” Churikian remained in court throughout the prosecutor’s motion and then the court excused Churikian once the proceedings were complete. Therefore, defendant was not denied his right to counsel during the consolidation motion. *Marsack, supra*, 231 Mich App 372.

Affirmed.

/s/ Jane E. Markey
/s/ Michael J. Talbot
/s/ Brian K. Zahra