

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee

v

GORDON ROBERT MELLING,

Defendant-Appellant.

UNPUBLISHED

May 7, 2009

No. 283460

Oakland Circuit Court

LC No. 2007-212639-FC

Before: Sawyer, P.J., and Murray and Stephens, JJ.

PER CURIAM.

Defendant appeals as of right his jury trial convictions of first-degree felony murder, MCL 750.316(1)(b), and armed robbery, MCL 750.529.¹ Defendant was sentenced to life imprisonment without parole for the first-degree felony-murder conviction, and 18 years, 9 months to 50 years' imprisonment for the armed robbery conviction. We affirm. This appeal has been decided without oral argument pursuant to MCR 7.214(E).

Defendant argues that the trial court violated his right to a fair trial by allowing jurors to submit questions to witnesses during the trial. Defendant contends that Michigan courts should not permit jurors to submit questions to witnesses during trial because this practice encourages premature deliberations before all of the evidence has been presented. We disagree.

“Generally, an issue is unpreserved if it is not properly raised before the trial court.” *People v Sands*, 261 Mich App 158, 160; 680 NW2d 500 (2004). In this case, defense counsel did not object to the jurors' questions, and therefore, did not preserve this issue. Consequently, this Court shall review defendant's claim for plain error. *People v Carter*, 462 Mich 206, 214; 612 NW2d 144 (2000). “[U]nder the plain error rule, three requirements must be met: (1) error occurred, (2) the error was . . . clear or obvious, and (3) the plain error affected [defendant's] substantial rights. The third requirement generally requires a showing . . . that the error affected the outcome of the trial proceedings.” *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). Defendant “must show a plain error that affected substantial rights.” *Id.* at 774.

¹ Defendant was found guilty but mentally ill.

In *People v Heard*, 388 Mich 182, 187-188; 200 NW2d 73 (1972), the Supreme Court held:

It would appear that in certain circumstances, a juror might have a question which could help unravel otherwise confusing testimony. In such a situation, it would aid the fact-finding process if a juror were permitted to ask such a question. We hold that the questioning of witnesses by jurors, and the method of submission of such questions, rests in the sound discretion of the trial court.

See also *People v Stout*, 116 Mich App 726, 733; 323 NW2d 532 (1982). Furthermore, if the trial court allows jurors to ask questions during trial, it must “employ a procedure that ensures that inappropriate questions are not asked, and that the parties have the opportunity to object to the questions.” MCR 6.414(E). Before the proceedings began, the trial court instructed the jury as follows:

During the trial you might think of an important question that you believe would help you better understand the facts of the case. You are allowed to ask such questions but under these circumstances[:] You should wait until after the witness has finished testifying and both attorneys have finished their questioning. If you still have an important question after this I will turn to the jury and ask do you have any questions. If you do please raise your hand and let me know you have a question. I [will] then ask you to write the question down. You [will] have paper and pencil[s]. I [will] ask you to write the question down. But [do] not ask it out loud. I [will] have my clerk come [and] take the question from you and I [will] review it here at the bench with both of the attorneys.

In *Stout, supra* at 732, “a juror raised his hand and asked the trial judge if he . . . could ask the witness” the following question, “ ‘I’m just curious if there are any other substances that would interfere with the results of your wet chemistry tests, * * * it could possibly cloud the issue?’ ” Defense counsel objected that the question was impermissible as outside the scope of the witness’s testimony. The trial court overruled the objection. The *Stout* Court found the juror’s questioning to be competent, and without any indication that the juror was prejudiced against the defendant. “The juror’s question aided the fact-finding process and, if anything, was favorable to defendant in that it sought to determine whether the expert’s test was valid.” *Stout, supra* at 733.

In this case, the trial court, on behalf of the jury, asked witnesses several questions throughout the proceedings. For example, one witness was asked if he could see into the store before cupping his hands around his face and pressing his face against the glass. The jury asked whether the same witness observed any blood on defendant. The jury asked another witness whether defendant attempted to flee, and whether anyone had tried to detain him. The jury asked several questions regarding whether defendant ever resisted taking his medication, and about his recent suicide attempt. As in *Stout*, the jurors’ questioning in the present case was competent and did not prejudice defendant. The jurors’ questions clarified each witness’s testimony. The trial court implemented an orderly procedure to allow the jurors to ask questions of the witnesses throughout the trial. In so doing, the trial court maintained the integrity of the judicial

proceedings. Therefore, the trial court did not err when it allowed jurors to submit questions to witnesses during trial, and thus, did not affect the outcome of the trial proceedings.

Affirmed.

/s/ David H. Sawyer

/s/ Christopher M. Murray

/s/ Cynthia Diane Stephens