

STATE OF MICHIGAN  
COURT OF APPEALS

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CALVIN RAY NEALOUS,

Defendant-Appellant.

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UNPUBLISHED

May 30, 1997

No. 186101

Kent Circuit Court

LC No. 94-002747 FC

Before: Saad, P.J., and Hood and McDonald, JJ.

MEMORANDUM.

A jury convicted defendant, as charged, of armed robbery, MCL 750.529; MSA 28.797. Defendant received an enhanced sentence of eight to fifty years' imprisonment, reflecting his status as a fourth offender, MCL 769.12; MSA 28.1084. He appeals as of right. We affirm.

Defendant argues that he was denied a fair and impartial trial when the prosecutor argued facts not in evidence to the jury. The record indicates that the prosecutor did improperly argue facts not in evidence. *People v Lee*, 212 Mich App 228, 255; 537 NW2d 233 (1995). Nevertheless, defendant failed to object to the improper remarks. An appellate court will reverse in the absence of an objection only if a curative instruction could not have eliminated the prejudicial effect of the remarks or where failure to review the issue would result in a miscarriage of justice. *People v Messenger*, 221 Mich App 171; \_\_\_ NW2d \_\_\_ (1997). The prejudicial effect of the remarks could have been eliminated by curative instruction.

Defendant also argues that the trial court erroneously admitted a transcript of defendant's statement to the police as an exhibit for use by the jury. Notwithstanding defendant's assertion to the contrary, the record indicates that defendant failed to raise this objection below. Accordingly, this issue is not preserved for appellate review. *People v Considine*, 196 Mich App 160, 162; 492 NW2d 465 (1992). An unpreserved, nonconstitutional error is forfeited unless the party claiming error demonstrates an error that is plain and that is decisive of the outcome or within the category of cases for which prejudice is presumed or reversal is automatic. *People v Grant*, 445 Mich 535, 548-549, 552-553; 520 NW2d 123 (1994). Assuming arguendo that the admission of the transcript constituted plain

error, the error was not outcome determinative. *People v Foreman (On Remand)*, 179 Mich App 678, 682; 446 NW2d 534 (1989).

Affirmed.

/s/ Henry William Saad

/s/ Harold Hood

/s/ Gary R. McDonald