STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CHARLES EDWARD FIELDS,

Defendant-Appellant.

UNPUBLISHED
February 15, 2000

No. 209380
Ingham Circuit Court
LC No. 96-070680-FH

Before: Hoekstra, P.J., and McDonald and Meter, JJ.

PER CURIAM.

Defendant appeals by right from his convictions by a jury of assault with intent to murder, MCL 750.83; MSA 28.278, assault with intent to do great bodily harm less than murder, MCL 750.84; MSA 28.279, and first degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2). The trial court sentenced defendant to concurrent prison terms of 25 to 50 years, 80 to 120 months, and 160 to 240 months, respectively. We affirm.

Defendant first contends that the trial judge that was originally assigned to his case committed error requiring reversal by allowing defendant to represent himself for approximately thirty minutes during the beginning of jury voir dire.[1] This Court reviews a grant of a defendant's request to proceed in propria persona for an abuse of discretion. *People v Adkins (After Remand)*, 452 Mich 702, 721 n 16; 551 NW2d 108 (1996). Before allowing a defendant to proceed in propria persona, a trial court must assess the propriety of self-representation and ensure that the defendant is intentionally giving up his or her right to counsel. *Adkins, supra* at 721. There are three main requirements, originally set forth in *People v Anderson*, 398 Mich 361, 366-367; 247 NW2d 857 (1976), for a valid waiver of counsel: (1) the defendant's request to represent himself or herself must be unequivocal; (2) the request must be made knowingly, intelligently, and voluntarily, meaning that the defendant must understand the dangers and disadvantages of self-representation and must waive the right to counsel "with eyes open;" and (3) the trial court must determine that self-representation by the defendant will cause no undue disruption and that the defendant will be able to follow courtroom protocol. *Adkins, supra* at 721-722, 735; *Anderson, supra* at 366-368. Furthermore, a trial court must comply with MCR 6.005(D), which requires it to (1) advise the defendant of the charge and the possible sentence, (2) explain the

risks of self-representation to the defendant, and (3) offer the defendant an opportunity to consult with an attorney. In *Adkins, supra* at 726-727, the Court held that a valid waiver of the right to counsel needs only substantial compliance with the requirements of *Anderson* and MCR 6.005. Substantial compliance occurs if "the court discuss[es] the substance of both *Anderson* and MCR 6.005(D) in a short colloquy with the defendant and make[s] an express finding that the defendant fully understands, recognizes, and agrees to abide by the waiver of counsel procedures." *Adkins, supra* at 726-727.

We conclude that the judge failed to substantially comply with the requirements of *Anderson* and MCR 6.005(D). The judge failed to inform defendant of his potential sentences and failed to inquire whether defendant could follow courtroom protocol and refrain from unduly disrupting the proceedings. More significantly, the judge failed to ensure that defendant was "knowingly, intelligently, and voluntarily" waiving his right to counsel. See *Anderson, supra* at 366-367, and MCR 6.005(D). In light of defendant's history of mental problems, his allegations of conspiracy, his concern over not having a law library, his statements about being stressed, and the generally peculiar nature of his statements during his motion for self-representation, the judge should have realized that defendant was not entering into his decision "with eyes open." See *Adkins, supra* at 722, quoting *Anderson, supra* at 368. We thus conclude that the judge erred in allowing defendant to waive his right to counsel, especially since there exists a presumption against such a waiver. See *Adkins, supra* at 721.

Our inquiry does not end here, however. We must now determine whether the court's error, which implicated defendant's constitutional right to counsel, is subject to harmless-error analysis. In *People v Anderson (After Remand)*, 446 Mich 392, 405; 521 NW2d 538 (1994), the Supreme Court indicated that certain "structural" constitutional errors are not subject to harmless error review. The *Anderson* Court listed "the total deprivation of the right to trial counsel" as one of these errors. *Id.* The *Anderson* Court went on to indicate that "trial errors" occurring during the presentation of the case to the jury are subject to harmless-error review, because they "'may . . . be quantitatively assessed in the context of other evidence presented in order to determine whether [the error] was harmless beyond a reasonable doubt.'" *Id.* at 405-406, quoting *Arizona v Fulminante*, 499 US 279, 307-308; 111 S Ct 1246; 113 L Ed 2d 302 (1991). We conclude that under the specific circumstances of this case – where defendant represented himself for only thirty minutes while the trial court asked some preliminary questions during the beginning of jury voir dire, and where defendant received the assistance of counsel during pretrial proceedings – the error was more akin to a "trial error" occurring during the presentation of the case to the jury than to a structural defect or a "total deprivation of trial counsel." See *Anderson, supra* at 405-406. Indeed, anything occurring during the brief period during which defendant represented himself may be "quantitatively assessed in the context of other evidence presented in order to determine whether [the period of self-representation] was harmless beyond a reasonable doubt." See *Anderson, supra* at 405-406.

This conclusion is reinforced by *People v Johnson*, 215 Mich App 658, 667, 669; 547 NW2d 65 (1996), in which this Court implied that a violation of the right to counsel must have "infected the entire trial mechanism" in order to avoid being subject to harmless-error analysis. Here, the entire trial mechanism was not infected, since defendant represented himself for only thirty minutes during some preliminary questioning during jury voir dire. Indeed, this case presents a different situation from that

requiring automatic reversal in *Johnson*, where the trial court improperly removed defendant's appointed counsel and where the defendant had to rely on substitute counsel throughout the trial. *Id*. at 662. Accordingly, we conclude that under the specific circumstances of this case, the error is subject to harmless-error analysis. See *People v Abernathy*, 153 Mich App 567, 572; 396 NW2d 436 (1985), and *People v Humbert*, 120 Mich App 195, 198; 327 NW2d 435 (1982) (certain violations of the right to counsel are subject to harmless-error analysis).

The pertinent standard for reviewing a preserved, constitutional error is whether the beneficiary of the error has established that it is harmless beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999); *Anderson, supra* at 405-406. In other words, the court must be satisfied beyond a reasonable doubt that there is no reasonable possibility that the error affected the jury's verdict. *Anderson, supra* at 406. Applying this standard to the facts of the instant case, we conclude that any error related to defendant's self-representation was harmless beyond a reasonable doubt. Defendant's self-representation lasted only thirty minutes, during which the court – not the attorneys – questioned prospective jurors. Appointed defense counsel performed adequately during the remainder of the proceedings. Although defendant did make an outburst during his self-representation (he stated, "I admitted I did this on the record," and he alluded to an allegedly withdrawn insanity defense), this outburst could not reasonably have affected the jury's verdict, since the defense strategy, as evidenced by defense counsel's opening and closing statements, was to essentially admit that defendant committed the assaults but to argue that he did not have the intent to kill while committing them. Accordingly, hearing defendant say "I admitted I did this" added little to the jury's determination of guilt. Given defense counsel's strategy, along with (1) the overwhelming evidence that defendant committed the assaults, (2) the trial court's instruction regarding the presumption of innocence, (3) the trial court's instruction to ignore any outbursts, and (4) the trial court's careful questioning of potential jurors regarding the outburst and defendant's subsequent acceptance of the jury, defendant's statements during his brief period of self-representation could not have reasonably affected the jury's verdict and do not require reversal. We further note that defendant's outburst was not necessarily linked to his self-representation and may have occurred even if he had been represented by counsel during the beginning of jury voir dire; this, too, weighs against a finding of error requiring reversal.

Next, defendant argues that the trial court should have granted his motion for a mistrial based on his outburst during jury voir dire and based on the accompanying comments directed to the trial judge by two spectators, one of whom stated, "[y]ou [sic] a racist, man," and both of whom informed the court that defendant "ha[d] a problem." We review a trial court's decision to deny a motion for a mistrial for an abuse of discretion. *People v Gonzales*, 193 Mich App 263, 265; 483 NW2d 458 (1992). In order to justify reversal, the denial of a mistrial motion must have prejudiced the defendant's rights. *Id.* Here, because defendant himself caused the allegedly prejudicial outburst that lead to the spectators' comments, the trial court did not abuse its discretion in denying defendant's motion for a mistrial. See *People v Siler*, 171 Mich App 246, 256-257; 429 NW2d 865 (1988) ("We will not condone or allow a defendant to perpetrate chaos at his own trial and then obtain a mistrial on the basis of prejudice."). Moreover, defendant's outburst did not result in prejudice, since, as indicated earlier, it could not reasonably have affected the outcome of the case. Nor could the statements by the two spectators have affected the outcome of the case. Indeed, the statement that defendant "ha[d] a

problem" likely *helped* defendant's argument that he did not intend to kill the assault victims (by implying that defendant was unstable and irrational), and we cannot fathom how an accusation that the court was racist could have caused the jury to convict defendant. Because the trial court did not abuse its discretion in denying defendant's motion for a mistrial, and because the denial did not prejudice defendant, this issue does not merit reversal.

Finally, defendant argues that the trial court committed error requiring reversal by failing to sua sponte excuse a juror who expressed some concern about her ability to be fair. We disagree that reversal is warranted, since defense counsel waived this issue by failing to challenge the juror for cause, failing to exhaust his peremptory challenges, and failing to express dissatisfaction with the jury. See *People v Legrone*, 205 Mich App 77, 82; 517 NW2d 270 (1994), and *People v Russell*, 434 Mich 922, 922; 456 NW2d 83 (1990) (adopting the dissenting opinion of Judge Sawyer in *People v Russell*, 182 Mich App 314; 451 NW2d 625, reversed 434 Mich 922 (1990)).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Gary R. McDonald
/s/ Patrick M. Meter

[1] Approximately thirty minutes after the start of jury voir dire, defendant revoked his request to represent himself, and the court then appointed defendant's standby attorney to represent him.