STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

CARLOS DOVEL WRIGHT,

Defendant-Appellant.

UNPUBLISHED
March 7, 2000

No. 202916
Macomb Circuit Court
LC No. 96-001665-FC

Before: Jansen, P.J., and Collins and J.B. Sullivan*, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of assault with intent to murder, MCL 750.83; MSA 28.278, assault with a dangerous weapon, MCL 750.82; MSA 28.277, and two counts of possession of a firearm during the commission of a felony, MCL 750.227b; MSA 28.424(2). He was sentenced to concurrent terms of ten to twenty years' imprisonment for the assault with intent to murder conviction and thirty-two to forty-eight months' imprisonment for the assault with a dangerous weapon conviction, and a consecutive two-year term for the felony-firearm convictions. He appeals as of right. We affirm, but remand for transcription of the jury voir dire proceedings.

Defendant argues that evidence of flight was improperly admitted at trial. Defendant did not preserve this issue with an appropriate objection in the trial court. Because evidence of flight is generally considered admissible at trial, *People v Coleman*, 210 Mich App 1, 4; 532 NW2d 885 (1995), defendant has not demonstrated either plain error or prejudice arising from the admission of this evidence. Accordingly, defendant is not entitled to relief on the basis of this unpreserved issue. *People v Carines*, 460 Mich 750, 761-767; 597 NW2d 130 (1999).

Next, defendant argues that the trial court abused its discretion by admitting portions of a police report into evidence. Defendant argues that the evidence constituted inadmissible hearsay. The purpose for which this evidence was offered is not clear from the record. The report would not have been hearsay under MRE 801(d)(1)(B) if offered to rebut a charge, suggested by defense counsel's cross-examination, that an eyewitness, Lynn Hixson, only recently was able to identify defendant. In

* Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

any event, even if the evidence constituted inadmissible hearsay, it is not more probable than not that the error was outcome determinative, considering that Hixson testified at trial concerning the substance of the challenged matter and was subject to cross-examination concerning the same. *People v Lukity*, 460 Mich 484, 495-496; 596 NW2d 607 (1999). Therefore, error requiring reversal has not been shown.

We find no merit to defendant's claim that evidence of prior bad acts was improperly admitted at trial. Viewed in context, it is apparent that Detective Ferno was only explaining that officers from another jurisdiction were familiar with what defendant looked like when they searched his mother's house. There was no mention of any prior bad acts by defendant. Defendant has not demonstrated any plain error affecting his substantial rights with regard to this unpreserved issue. *Carines, supra*.

We also reject defendant's claim that reversal is required because of prosecutorial misconduct. While the prosecutor asked the jurors to place themselves in the victims' place, it is apparent that the intent of this statement was to have the jurors evaluate the reasonableness of the victims' conduct in light of the facts adduced at trial. In this context, the statement was not improper. *People v Warren (After Remand)*, 200 Mich App 586, 589; 504 NW2d 907 (1993). The prosecutor was not attempting to have the jurors sympathize with the victim, nor was he seeking to invoke an emotional response. See *People v Dalessandro*, 165 Mich App 569, 581; 419 NW2d 609 (1988); *People v Modelski*, 164 Mich App 337, 347; 416 NW2d 708 (1987). Accordingly, reversal is not warranted.

Defendant next argues error in the prosecution's failure to produce a res gestae witness at trial, even though defendant had requested the assistance of the prosecutor and police in locating the witness and securing his presence at trial. The record indicates that the court ordered the police to do whatever was necessary, other than locking the witness up, to secure his presence for defendant. However, there is no further mention of this issue in the record. In is unclear from the record whether the witness was produced and simply not called by defendant, or if the witness could not be located.

In considering this argument, the ultimate inquiry is whether defendant was prejudiced as a result of the failure to produce the missing witness. *People v Jackson*, 178 Mich App 62, 66; 443 NW2d 423 (1989). Because the trial record is silent with regard to the subsequent events surrounding this issue, and because defendant did not request an evidentiary hearing after trial to further develop the record on this issue or timely raise this issue in a motion for new trial,[1] we conclude that this issue was not properly preserved for appellate review and, accordingly, decline to consider it. *People v Dixon*, 217 Mich App 400, 409; 552 NW2d 663 (1996); *Jackson, supra*.

We agree that defendant is entitled to a transcript of the jury voir dire proceedings in this case. *People v Neal*, 459 Mich 72, 81; 586 NW2d 716 (1998). Accordingly, we remand this case for transcription of the jury voir dire. Upon receiving a copy of that transcript, defendant may within twenty-eight days file an appeal of right relating only to issues, if any, arising from the voir dire. See *People v Mark Jackson*, 459 Mich 942 (1999); *People v George Jackson*, 459 Mich 978 (1999). Defendant's convictions and sentences are affirmed in all other respects.

Defendant's convictions and sentences are affirmed. The case is remanded for transcription of the jury voir dire in accordance with this opinion. We do not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Jeffrey G. Collins
/s/ Joseph B. Sullivan

[1] While defendant raised this issue in his motion to remand, that motion was denied on its merits and defendant still has not made a sufficient offer of proof in support of his claim.