STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

JESSE CARL LOVELAND,

Defendant-Appellant.

UNPUBLISHED
May 5, 2000

No. 214419
Manistee Circuit Court
LC No. 97-002800-FH

Before: Jansen, P.J., and Hoekstra and Collins, JJ.

PER CURIAM.

Defendant was convicted by jury of assaulting a prison employee, MCL 750.197c; MSA 28.394(3), and was sentenced as a fourth-offense habitual offender, MCL 769.12; MSA 28.1084, to forty-two months' to fifteen years' imprisonment. Defendant appeals as of right. We affirm.

While incarcerated for a previous offense, defendant threw liquid from a cup at a prison employee. The liquid was believed to be defendant's urine. On appeal, defendant argues that there was insufficient evidence to support his conviction for assaulting a prison employee. Specifically, defendant argues that because MCL 750.197c; MSA 28.394(3) requires that the assault be accomplished through the use of violence, threats of violence, or dangerous weapons, which defendant claims were not present here, his conviction may not be sustained. We disagree. The term, "violence," used in MCL 750.197c; MSA 28.394(3), has previously been interpreted by this Court to include the defendant's conduct. *People v Boyd*, 102 Mich App 112, 117; 300 NW2d 760 (1980) ("It is our opinion that the throwing of liquid, alleged to be urine, into the face of another person constitutes the use of 'violence', thereby satisfying the requirements of the statute [MCL 750.197c; MSA 28.394(3)]"); *People v Terry*, 217 Mich App 660; 553 NW2d 23 (1996) (spitting on a prison employee constitutes violence under the statute). We decline to depart from this precedent as defendant urges us to do. See MCR 7.215(H)(1). Under *Boyd* and *Terry*, the act of throwing liquid at a prison employee falls within the scope of MCL 750.197c; MSA 28.394(3). Thus, defendant's contention is without merit.

In a related argument, defendant contends that the trial court's jury instructions deprived him of due process and a fair trial where the court did not mention that the assault must have been committed through the use of violence, or the threat of the use of violence or through the use of dangerous

weapons. Because counsel failed to raise the issue at trial, this claim is unpreserved. *People v Grant*, 445 Mich 535, 553; 520 NW2d 123 (1994); *People v Kennebrew*, 220 Mich App 601, 608; 560 NW2d 354 (1996). Where no objection is made to an alleged error of constitutional import, this Court reviews for plain error. *People v Carines*, 460 Mich 750, 764-765; 597 NW2d 130 (1999). Three requirements must be met to withstand forfeiture under the plain error rule: "(1) error must have occurred, (2) the error was plain, i.e., clear or obvious, and (3) the plain error affected substantial rights." *Carines, supra* at 763, citing *United States v Olano*, 507 US 725, 731-734; 113 S Ct 1770; 123 L Ed 2d 508 (1993).

This Court reviews jury instructions in their entirety to determine whether manifest injustice occurred. *People v Head*, 211 Mich App 205, 210; 535 NW2d 563 (1995); *People v Caulley*, 197 Mich App 177, 184; 494 NW2d 853 (1992). Even if the instructions are somewhat imperfect, no error exists if the instructions fairly present to the jury the issues to be tried and sufficiently protect the defendant's rights. *Head, supra* at 210-211; *Caulley, supra*. When viewed as a whole, the court's instructions in this case protected defendant's rights; defendant meets none of the three requirements for plain error. The court properly read CJI2d 17.14, instructing on the meaning of "violence," and no obvious error occurred when the trial court declined on its own accord to disregard two well-established holdings of this Court. *Boyd, supra*; *Terry, supra*. Moreover, defendant was not prejudiced by the trial court's decision because the jury instructions conformed to this Court's construction of the term "violence." *Id*. In any event, viewed in a light most favorable to the prosecution, there was sufficient evidence for a reasonable jury to find defendant guilty beyond a reasonable doubt, *People v Wolfe*, 440 Mich 508, 513-516; 489 NW2d 748, amended 441 Mich 1201 (1992). Thus, any instructional error could not be considered outcome determinative. *Grant, supra*; *Carines, supra*.

Defendant next argues that the trial court deprived him of his right to present a defense and to closing arguments when it deterred his attorney from arguing to the jury that defendant's actions were not legally sufficient to constitute a violent act under MCL 750.197c; MSA 28.394(3). Again, defendant failed to object to the court's ruling and therefore forfeited review absent plain error. *Carines, supra* at 764-765. We conclude that no error occurred. Defendant was not denied closing arguments where the only action by the court was to preclude defense counsel from arguing any misstatement of law as set forth in *Boyd* and *Terry*.

Finally, because we find no single error, we reject defendant's argument that cumulative errors deprived him of a fair trial. *People v Bahoda*, 448 Mich 261, 292 n 64; 531 NW2d 659 (1995); *People v Daoust*, 228 Mich App 1, 16; 577 NW2d 179 (1998).

Affirmed.

/s/ Kathleen Jansen
/s/ Joel P. Hoekstra
/s/ Jeffrey G. Collins