

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

LARRY LIGE, JR.,

Defendant-Appellant.

UNPUBLISHED

December 11, 2003

No. 236345

Wayne Circuit Court

LC No. 00-012472

Before: Cavanagh, P.J., and Jansen and O’Connell, JJ.

PER CURIAM.

Defendant appeals as of right his jury conviction of armed robbery, MCL 750.529. We affirm.

Defendant was convicted of the armed robbery of Castle Jewelry located in Hamtramck on July 20, 2000. While another perpetrator held the store owner at gunpoint, defendant was alleged to have emptied the contents of the safe and layaway box located in the store. The police investigation following the crime resulted in a set of fingerprints being lifted from a black plastic tray that had been inside the safe at the time of the robbery. The fingerprints matched defendant’s fingerprints, in particular, the four fingers on his left hand. Thereafter defendant was charged and convicted of the crime.

On appeal, defendant argues that bad acts evidence was improperly admitted when a fingerprint card that referenced his fourth habitual offender status was admitted into evidence. However, not only did defendant fail to object to the admission of the fingerprint card, but he expressly approved of its admission. This action constituted a waiver that extinguished any error in the admission of this evidence and, thus, there is no error to review. See *People v Carter*, 462 Mich 206, 214-215, 219; 612 NW2d 144 (2000).

Next, defendant argues that he was denied a properly instructed jury because the instructions issued to the jury did not include a “standard for evaluating fingerprint evidence.” Again, here, defendant not only failed to object to the instructions, but when specifically queried by the trial court as to whether “both sides [were] satisfied that I have read the proper jury instructions,” defense counsel replied in the affirmative. This affirmative approval of the jury instructions extinguished any error on appeal. *Carter, supra*; *People v Tate*, 244 Mich App 553, 559; 624 NW2d 524 (2001). However, even if we considered this issue, it would not warrant reversal. The jury instructions as a whole, including the instruction on identification, elements of

the crime, and the prosecutor's burden of proof, fairly presented the issues to be tried and protected defendant's rights. See *People v McFall*, 224 Mich App 403, 412-413; 569 NW2d 828 (1997).

Finally, defendant argues that he was denied the effective assistance of counsel because, as discussed above, his attorney failed to object to the admission of the fingerprint card and because he failed to object to the jury instructions. We disagree. Because defendant failed to move for a *Ginther*¹ hearing below, this Court's review is limited to errors apparent on the record. *People v Rodgers*, 248 Mich App 702, 713-714; 645 NW2d 294 (2001).

To establish ineffective assistance of counsel, a defendant must show that: (1) counsel's performance fell below an objective standard of reasonableness, and (2) there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *People v Toma*, 462 Mich 281, 302-303; 613 NW2d 694 (2000). We have reviewed the record and conclude that defendant has not carried his burden. See *People v Stanaway*, 446 Mich 643, 687; 521 NW2d 557 (1994).

First, it is unclear from the lower court record whether the section of the fingerprint card that referenced defendant's fourth habitual offender status was admitted into evidence. However, even if this evidence had been admitted without objection, such error would not establish ineffective assistance of counsel warranting relief because it is not reasonably probable that the result of the proceedings would have been different if defense counsel had objected. The properly admitted, un rebutted evidence clearly established that (1) the black plastic tray in which defendant's fingerprints were lifted was located inside the safe at the time of the robbery, (2) the tray was not accessible to defendant and could not have been touched by him at any time prior, or subsequent, to the robbery, and (3) they were defendant's fingerprints.

Second, even if defendant was entitled to the "fingerprint instruction," it is not reasonably probable that his counsel's failure to request it caused the result of the proceedings to be different. As previously discussed, the jury was instructed that it was the prosecutor's burden to prove, beyond a reasonable doubt, that defendant committed the crime and the jury was cautioned to "examine the identification testimony carefully." In light of the evidence against defendant, it does not appear that he was denied a fair trial. See *People v Knapp*, 244 Mich App 361, 385; 624 NW2d 227 (2001). Accordingly, defendant was not denied the effective assistance of counsel.

Affirmed.

/s/ Mark J. Cavanagh
/s/ Kathleen Jansen
/s/ Peter D. O'Connell

¹ *People v Ginther*, 390 Mich 436, 443; 212 NW2d 922 (1973).