STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED February 21, 2008
v	No. 274946 Oakland Circuit Court
WEST SPRUILL, Defendant-Appellant.	LC No. 2006-209771-FH

Before: Bandstra, P.J., and Donofrio and Servitto, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of felonious assault, MCL 750.82, and sentenced as an habitual offender, third offense, MCL 769.11, to a prison term of two to eight years. He appeals as of right. We affirm.

Defendant's conviction arises from an incident in which he threw a chair at Randall Estes, the supervisor of a case management team at Community Network Services, which provided outpatient mental health services. Estes attempted to introduce defendant to his new case manager, but he responded in an outburst of expletives. He grabbed a chair and feigned throwing it before a security guard and an intake specialist restrained him. When they released him, he picked up the chair again and threw it across a table. The chair hit the ceiling and caused a fluorescent light bulb to break and fall to the floor. The chair struck Estes in his side and damaged a wall. Defendant was also charged with assaulting Estes with a piece of broken glass, but he was acquitted of that charge.

Defendant argues that the evidence was insufficient to support his conviction because the prosecution failed to prove that the chair was a dangerous weapon, i.e., capable of inflicting serious injury, under the circumstances of this case.

When reviewing the sufficiency of the evidence in a criminal case, this Court must view the evidence in a light most favorable to the prosecution to determine whether a rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v Johnson*, 460 Mich 720, 723; 597 NW2d 73 (1999).

MCL 750.82 proscribes felonious assault, which is an assault "with a gun, revolver, pistol, knife, iron bar, club, brass knuckles, or other dangerous weapon" committed without intent to commit murder or to inflict great bodily harm less than murder. "The elements of

felonious assault are (1) an assault, (2) with a dangerous weapon, and (3) with the intent to injure or place the victim in reasonable apprehension of an immediate battery." *People v Avant*, 235 Mich App 499, 505; 597 NW2d 864 (1999). In *People v Goolsby*, 284 Mich 375, 378; 279 NW 867 (1938), the Court explained:

> Some weapons carry their dangerous character because so designed and are, when employed, per se, deadly, while other instrumentalities are not dangerous weapons unless turned to such purpose. The test as to the latter is whether the instrumentality was used as a weapon and, when so employed in an assault, dangerous. The character of a dangerous weapon attaches by adoption when the instrumentality is applied to use against another in furtherance of an assault. When the purpose is evidenced by act, and the instrumentality is adapted to accomplishment of the assault and capable of inflicting serious injury, then it is, when so employed, a dangerous weapon.

The chair that defendant threw had metal legs, and was described as being "much heavier than a folding chair." It broke a light in the ceiling and put a hole in a wall. It left a bruise on Estes's hip. The evidence regarding the character of the chair and the manner in which it was thrown, viewed in a light most favorable to the prosecution, was sufficient to enable the jury to find that it was used as a dangerous weapon. *People v Rivera*, 120 Mich App 50, 55-56; 327 NW2d 386 (1982).

Defendant argues that the trial court erred when it admitted a photograph of Estes's bruise that the prosecution had not provided to defendant before trial. Defendant argues that the trial court should have excluded the photograph as a sanction for the prosecution's discovery violation.

This Court reviews a trial court's decision regarding the appropriate remedy for noncompliance with a discovery order for an abuse of discretion. *People v Davie*, 225 Mich App 592, 597-598; 571 NW2d 229 (1997). "There is no general constitutional right to discovery in a criminal case," and due process requires only that the prosecution provide a defendant with material, exculpatory evidence in its possession. *People v Greenfield*, 271 Mich App 442, 447 n 4; 722 NW2d 254 (2006) (citations and internal quotation marks omitted).

Assuming arguendo that the prosecution's failure to provide a description of and an opportunity to inspect the photograph violated MCR 6.201(A)(6), defendant was not entitled to relief unless there was actual prejudice. *Id.*, p 456 n 10, citing *Davie*, *supra.* Upon inquiry by the trial court, defendant failed to articulate how he was prejudiced by the delay in learning of the photograph. He asserted that the injury was "forged," but did not explain how the delay impinged his ability to challenge the authenticity of the injury. In the absence of a showing of prejudice, the trial court did not abuse its discretion in admitting the photograph.

Finally, defendant argues that the prosecutor committed misconduct by informing the jury that defendant did not face years in prison if convicted.

Defendant did not preserve this issue for appellate review by objecting at trial to the remarks challenged on appeal. Therefore, this Court reviews this issue pursuant to the plain error test of *People v Carines*, 460 Mich 750, 763; 597 NW2d 130 (1999). Defendant must

establish that an error occurred, that it was plain (i.e., clear or obvious), and that the error affected his substantial rights, which generally requires a showing that it affected the outcome of the trial court proceedings. *Id.*, pp 763-764.

Defendant, who was representing himself, mentioned in his opening statement that he was "facing many years in prison" and noted that there were people who "would love to see me rot in a prison with child molesters, rapists, baby killers and murderers". In his closing argument, he argued that he did "not deserve to go to prison for a bunch of years", and again referred to "facing all these years". In the prosecutor's rebuttal argument, he stated:

> Mr. Spruill not being a lawyer stands before you and continuously tells you he's going to prison for a lengthy period of time. Nothing is farther from the truth. The defendant has been incarcerated for 10 months since this happened. The minimum sentence he can receive is 10 months so don't go back in the jury room and decide this case because if you convict the defendant who you feel sorry for, he's going to prison for a lengthy period of time. The judge is going to tell you that he is the person that would affix the penalty for what Mr. Spruill did on that date.

The prosecution concedes on appeal that it was improper to mention the sentencing guidelines range or speculate about defendant's sentence. However, the statements were made in response to defendant's arguments and the trial court properly instructed the jury that the possible penalty should not influence its verdict. Under these circumstances, any error did not affect defendant's substantial rights and appellate relief is not warranted. *People v Singer*, 174 Mich 361; 140 NW 522 (1913); *People v Szczytko*, 40 Mich App 161, 179-180; 198 NW2d 740 (1972), aff'd 390 Mich 278 (1973).

Affirmed.

/s/ Richard A. Bandstra
/s/ Pat M. Donofrio
/s/ Deborah A. Servitto