

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

UNPUBLISHED
September 20, 2011

v

DEAN EVERETT DAVIS,
Defendant-Appellant.

No. 298788
Ionia Circuit Court
LC No. 2009-014585-FH

Before: O'CONNELL, P.J., and METER and BECKERING, JJ.

PER CURIAM.

Defendant appeals by right from his conviction of assault on a prison employee, MCL 750.197c. We affirm.

Defendant was an inmate in a prison detention unit where, according to defendant, there was an atmosphere of fear, particularly fear of sexual assaults. This atmosphere caused defendant anxiety, grief, and torment. One day when a corrections officer attempted to remove defendant's meal tray, defendant sprayed him with juice. The juice hit the officer's face, torso, and arms. Defendant admitted at trial that he sprayed juice at the officer; the officer testified that the juice incident offended, humiliated and angered him, and that it ruined his day.

Defendant first argues on appeal that the evidence was insufficient to convict him of the charged crime. We review de novo a defendant's challenge to the sufficiency of the evidence. *People v Harverson*, ___ Mich App ___; ___ NW2d ___ (Docket No. 293014, December 28, 2010), slip op pp 2-3. We examine the record to determine whether a rational trier of fact could have found that the prosecutor proved the elements of the charged crime. *People v Vaughn*, 186 Mich App 376, 379; 465 NW2d 365 (1990).

Here, the evidence was sufficient to convict defendant of assault on a prison employee. As we explained in *People v Terry*, 217 Mich App 660; 553 NW2d 23 (1996), a prosecutor in a prison assault case must prove that the prisoner applied physical force against a prison employee to harm or embarrass the employee. *Id.* at 661-662. In this case, defendant's admission that he sprayed the officer with juice was sufficient evidence to establish that defendant used physical force against the officer. In turn, the officer's testimony that he was offended and humiliated was sufficient to establish that defendant sprayed the juice to embarrass the officer. Accordingly, the evidence at trial was adequate to establish violence as defined in *Terry*.

Defendant argues that the rule of lenity requires that the prison assault statute be construed in his favor. In support defendant cites multiple cases, including *People v Gilbert*, 414 Mich 191, 211; 324 NW2d 834 (1982). In *Gilbert*, our Supreme Court explained that penal statutes must be strictly construed, and that if a statute is ambiguous, the ambiguity must be resolved in favor of lenity. *Id.* at 211. The statute at issue in *Gilbert* prohibited equipping a vehicle with a radio receiving set that received police frequencies. *Id.* at 197 n 2, interpreting MCL 750.508. Relying upon the rule of lenity and other rules of statutory construction, the Court determined that a radar detector was not a radio receiving set within the meaning of the statute. *Id.* at 211.

Here, in contrast, the statute at issue is not ambiguous. The statute declares that a prisoner who assaults a prison employee is guilty of a felony. MCL 750.197c. In *Terry*, this Court resolved any ambiguity as to whether the statute required particular proof of violence. Because there is no ambiguity in the statute, the rule of lenity does not apply.

Defendant also argues that if *Terry* controls the interpretation of the prison statute, then this Court should declare the statute is void for vagueness. According to defendant, the statute is unconstitutionally vague because an ordinary person would not understand what conduct is prohibited by the statute. We disagree. This Court has explained, “A statute may be challenged for vagueness . . . [if] . . . it does not provide fair notice of the conduct proscribed.” *People v Nichols*, 262 Mich App 408, 409-410; 686 NW2d 502 (2004). Here, the prison assault statute plainly precludes an assault against a prison employee. Defendant’s constitutional challenge fails.

Defendant next argues that the trial court violated his due process rights by acceding to his request to represent himself. We review for clear error the trial court’s determination that defendant’s waiver of the right to counsel was knowing and intelligent. See, e.g., *People v Williams*, 470 Mich 634, 640; 633 NW 2d 597 (2004). If there is no clear error regarding the waiver, we review for abuse of discretion the trial court’s ultimate decision regarding self-representation. *People v Hicks*, 259 Mich App 518, 521; 675 NW2d 599 (2003).

We find no error in the trial court’s findings or in its ultimate decision to grant defendant’s request for self-representation. The trial court properly applied the requirements delineated in MCR 6.005(D) and in *People v Anderson*, 398 Mich 361, 367-368; 247 NW2d 857 (1976). The record demonstrates that defendant unequivocally refused representation by counsel, and that defendant informed the trial court he wished to proceed pro se. The trial court apprised defendant of the risks of self-representation and of the possible sentences in the event of a conviction. Defendant’s responses on the record demonstrate that he knowingly, intelligently, and voluntarily opted to proceed with self-representation.

Defendant next maintains that the trial court erred by failing to instruct the jury that the prosecutor was required to prove the assault at issue involved violence. Defendant waived this issue when he indicated on the record at trial that the instructions were “fine.” See *People v Kowalski*, ___ Mich ___, ___; ___ NW2d ___ (No. 141695, July 26, 2011), slip op p 15.

Defendant last argues that the trial court violated his constitutional right to present a defense when the court denied his motion for a forensic examination. We review this issue to

determine whether an error occurred, and, if so, whether the prosecutor can establish that the error was harmless beyond a reasonable doubt. *People v Carines*, 460 Mich 750, 774; 597 NW2d 130 (1999). We find no error. MCL 768.20a(1) requires that a defendant seeking to assert an insanity defense must file a written notice within a specified time:

If a defendant in a felony case proposes to offer in his or her defense testimony to establish his or her insanity at the time of an alleged offense, the defendant shall file and serve upon the court and the prosecuting attorney a notice in writing of his or her intention to assert the defense of insanity not less than 30 days before the date set for the trial of the case, or at such other time as the court directs.

The trial court must exclude evidence of insanity if the defendant fails to file the required written notice. MCL 768.21(1) (“If the defendant fails to file and serve the written notice prescribed in section . . . 20a, the court shall exclude evidence offered by the defendant for the purpose of establishing . . . the insanity of the defendant.”)

Defendant in this case never filed a written notice of intent to assert an insanity defense. Moreover, defendant filed his motion for a forensic examination long after the deadline for submitting the notice of insanity defense. Given that MCL 768.21(1) required the trial court to preclude any proffered evidence concerning the insanity defense, defendant would have been precluded from presenting any information obtained from a forensic examination. Accordingly, the trial court properly denied defendant’s motion for a forensic examination. See *People v Wilkins*, 184 Mich App 443, 447; 459 NW2d 57 (1990) (If a defendant fails to give the requisite statutory notice of insanity defense, the trial court must exclude evidence on the defense).

Affirmed.

/s/ Peter D. O’Connell
/s/ Patrick M. Meter
/s/ Jane M. Beckering